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January 7, 2009

Via Cal Express

Council President Ben Hueso
and Members of the City Council
City of San Diego
202 "C" Street, 10th Floor
San Diego, California 92101

Re: Promenade Condominium Conversion, Project No. 105158
City Council Docket of January 13, 2009

Honorable President Hueso and Members of the City Council:

We represent Promenade Acquisition LLC, the applicant for the Promenade conversion. The usual housing "advocates" have objected to the conversion on their usual frivolous "environmental" grounds. We ask that the Council deny their appeal while correcting one of the subdivision conditions.

Past Conversion Litigation

Before we respond to the advocates' issues, we want to be sure the Council is aware of the advocates' history and goals. The advocates have sued the City repeatedly over conversions and have routinely challenged large development projects (i.e., where there are deep pockets for attorney's fees). We have been able to find the following cases filed by the advocates concerning conversions:

- Affordable Housing Coalition (AHC), et al. v. City, et al., Superior Court Case No. GIC 857723; Appellate Case No. D049665. The former City Attorney tentatively settled this case by promising that the City would pay \$75,000 for the advocates' legal fees, remain subject to other court rulings on conversions, and set a cap on conversions. (Enclosed item 1 is a copy of that attempted settlement.) The Council rejected the settlement, largely because of the conversion cap, but also after it was pointed out that the City would still be subject to lawsuits on the alleged "environmental" issue. The trial court dismissed the case because the advocates' lawyer failed to request a timely trial. The advocates' lawyer appealed but declined to pursue the appeal, so the appellate court dismissed the appeal. Result: No additional housing units created, no conversions prevented.

settlement (i.e., enclosed item 1). It was also dismissed at trial for failure to request a timely hearing, then appealed. The advocates settled with most of the defendant converters; the converters agreed to pay the advocates some money, largely for the advocates' attorney's fees, in order to be allowed to proceed with their projects. Unfortunately, we do not know exactly how much they paid because their settlement was confidential. (We understand this settlement included the previous case.) The appeal was then dismissed as to the settling defendants. The non-settling defendants (including other clients of this firm) refused to pay what appeared to them to be extortion, and the appeal was eventually dismissed against them anyway. Result: No additional housing units created, no units made affordable, no conversions prevented, but the advocates' lawyer was paid.

- Citizens for Responsible, Equitable Environmental Development (CREED), et al. v. City, Superior Court Case No. GIC 869677. This case did not challenge particular conversions. Instead, the advocates filed it to force the City to calculate some data for them relating to conversions. Although the advocates settled it privately with the then-City Attorney, it appears the Council did not approve (or even see) that settlement even though it committed the City to remaining subject to the court's jurisdiction. Result: No additional housing units created, no units made affordable, no new parking, and no conversions prevented.

- CREED, et al. v. City, et al., Superior Court Case No. GIC 871259. This was also among the cases as to which the former City Attorney tried to sell out the Council (enclosed item 1). The trial court rejected the case because the advocates had failed to bring in all the important parties. Result: No additional housing units created, no units made affordable, no new parking, and no conversions prevented.

- CREED, et al. v. City, Superior Court Case No. GIC 876017. The Council had held appeal hearings on the environmental issues, at least for most of the projects in this case. However, the Council had not held appeal hearings on the actual subdivision approvals. Most of the converters failed to appear in court, and the one who did appear did not contest the trial. The case resulted in an order rescinding those conversions but neither permanently barring them nor requiring environmental review of them. Instead, the court only ordered the City Council to hold an appeal hearing on the subdivision maps (i.e., not on the so-called environmental issues). And, of course, the judgment allows the advocates to seek their legal fees for this awe-inspiring guardianship of the public interest. We understand their request for fees is pending.

- CREED, et al., v. City, Superior Court Case No. 37-2008-00078171-CU-TT-CTL. It appears confidential settlements are being pursued. There has been no trial.

- CREED, et al., v. City, Superior Court Case No. 37-2008-00093830-CU-TT-CTL. Our firm happens to represent three of the defendants in that case. The only event of interest in that case thus far was the advocates' settlement offer of \$600,000 to be paid to a new entity

apparently controlled by the advocates' attorney, who by the way also seems to be the only person associated with CREED. (By law – EVIDENCE CODE §1152 and §1154 – settlement offers may not be used as admissions of guilt or to prove the invalidity of a claim, but they may be used for any other purpose; there is no absolute confidentiality about an offer. E.g., *Zhou v. Unisource Worldwide*, 157 Cal.App.4th 1471, 1478-1480 (2007).) The new entity is called a "land foundation," but we were unable to find a recorded local land transaction showing it does anything but gather funds for the advocates' attorneys. The new members of the Council should recognize that the advocates are trying to use them to warp public policy for personal gain.

Scorecard: No new housing. No new affordable units. No existing units restricted as affordable. No additional parking for existing housing. After several years of lawsuits, no court has accepted the advocates' theory that conversions require an environmental impact report. Confidential settlements. Lots of attorney's fees paid to the advocates' attorney and lots more demanded. I have enclosed as item 2 copies of some of the relevant legal documentation. We see no purpose to the advocates' ongoing appeals of conversions except their desire to force converters to feed the beast by getting them to pay the advocates' legal fees. If anyone on the Council has any connection to the advocates or their attorney, this would be a good time to ask them to stop wasting the Council's time and the City's funds by filing these appeals.

"Environmental" Issues

The advocates have raised several bases for their appeal, arguing that a change in ownership of existing residences requires an environmental impact report. Staff's previous responses (excerpts from which are enclosed as item 3) point out the speculative nature of each of these bases. The advocates have provided argument, not evidence, of a potential environmental impact. Indeed, the advocates have not provided *any* evidence relating specifically to Promenade. We offer the following comments about Promenade in addition to staff's previous general comments.

There seem to be three main substantive issues and a procedural one, the first substantive issue being a theory that parking will be so inadequate as to require full environmental review. Promenade was built a few years ago. Promenade contains a total of 970 units: 363 1-bedroom units, 116 1-bedroom-plus-den units, 292 2-bedroom units, and 199 2-bedroom-plus-den units. Table 142-05C of the Municipal (Land Development) Code requires that conversions have 1.0 parking spaces for each 1-bedroom unit, 1.25 spaces for each 2-bedroom unit, and 1.5 spaces for each 3-bedroom unit; for Promenade, that would require 1092.75 spaces (if the dens are not counted as bedrooms) or 1171.5 spaces (if they are). For new construction, the same Table requires 1.5 spaces for each 1-bedroom unit, 2 spaces for each 2-bedroom unit, and 2.25 spaces for each 3-bedroom unit; for Promenade, that would require 1700.5 spaces or 1808.25 spaces. According to the applicant's engineers, Promenade has 1,852 off-site parking spaces, over forty more than would be required if this were a new project and the City counted dens as bedrooms.

The notion that it is short of parking is ludicrous. It would have enough parking even if it were just now being permitted as condominiums.

Second, the advocates have argued that conversions displace occupants who will then need new housing built for themselves. Again, the advocates have offered no actual evidence for this speculative theory. Relocation benefits required of this conversion (Condition 13) will ameliorate the social and economic issues, which are not environmental issues anyway. In the context of potential impacts to the physical environment, the advocates' argument does not even make sense, since buyers of the individual units would be moving from elsewhere, freeing up their living spaces. The concept of displacement only applies when homes are being destroyed, but the Promenade conversion will not do so.

Third, the advocates have argued that conversions violate policies in the City's general plan, such as the housing element, requiring consideration of affordable housing. This is also not an environmental issue, and in the context of planning laws it is up to the City to balance those policies with other policies encouraging, for example, homeownership. As with the advocates' other boilerplate arguments, this argument is not even applicable to Promenade: Promenade is a luxury project with rents ranging from \$1200 per month to \$2200 per month, above what the law and advocates consider "affordable." Allowing its conversion to condominiums will have no effect on the City's ability to provide affordable housing. Concluding that the conversion will necessitate the construction of more housing makes as much sense as concluding that it will increase unemployment.

The advocates have also raised some procedural arguments. For example, they claim that the City's housing element is invalid because the City failed to revise it pursuant to GOVERNMENT CODE §65588(e). GOVERNMENT CODE §65588 requires that cities update their housing elements periodically. Subdivision (b) of that code section generally requires that these updates occur not less than every five years, while paragraph (e)(5) of that section more specifically requires that agencies in the San Diego region approve a round of updates by June 30, 2005. The City updated its housing element late – on December 15, 2006, by Resolution R-302242. (A copy of that resolution is enclosed item 4.) However, the updated one now exists, and according to subdivision (b) of that law, the next update is not due until 2011. The legal requirement is that each project conform to the "applicable" general plan, e.g., GOVERNMENT CODE §66474(a), which includes the housing element. If this project had been considered during the window between when the housing element was supposed to have been updated (June 2005) and when it actually was updated (December 2006), the advocates might have been onto something. However, their theory has been moot for over a year-and-a-half. The City has a valid housing element. The advocates simply don't like conversions being allowed under it, but the City has the authority to interpret its own plans. E.g., *Sequoyah Hills Homeowners Association v. City of Oakland*, 23 Cal.App.4th 704, 717-719 (1993).

"Affordable" Housing

Oddly enough, converting this particular project to condominiums will *increase* the availability of lower-cost housing. Promenade is a luxury project. Rents currently run from \$1,200 per month for a fairly small 1-bedroom unit to over \$2,200 for one of the 2-bedroom-plus-den units. Yet the owners will reserve ten percent (i.e., 97) of the converted units for affordable housing under the City's inclusionary housing ordinance. Thus, approving this conversion will actually *increase* the supply of affordable housing.

Defense and Indemnity

The project's owner did not appeal the Planning Commission's action because the Commission approved the conversion. However, in light of the advocates' appeal, litigation now appears likely, and so we must ask the Council to amend one of the conditions the Commission imposed. The existing defense/indemnity condition (#5) requires that the owner pay the City Attorney's fees and gives the City control over any litigation. However, the Map Act (GOVERNMENT CODE §66474.9) requires that, if the City uses its own attorneys, the City bear its own fees; it also prohibits imposing a settlement on the property owner. We therefore ask that Condition 5 be changed to conform to state law. It would then read:

Subdivider shall defend, indemnify, and hold the City (including its agents, officers, and employees [together, "Indemnified Parties"]) harmless from any claim, action, or proceeding against any Indemnified Party to attack, set aside, void, or annul City's approval of this project, which action is brought within the time period provided for in Government Code §66499.37. City shall promptly notify the subdivider of any claim, action, or proceeding and shall cooperate fully in the defense. If City fails to promptly notify the subdivider of any claim, action, or proceeding, or if City fails to cooperate fully in the defense, the subdivider shall not thereafter be responsible to defend, indemnify, or hold City harmless. City may participate in the defense of any claim, action, or proceeding if City both bears its own attorney's fees and costs, and defends the action in good faith. The subdivider shall not be required to pay or perform any settlement unless the settlement is approved by the subdivider.

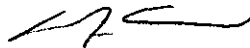
This essentially quotes the Map Act. The Council has approved, and I understand the current City Attorney has recently accepted, virtually identical language on several other projects our firm has represented.

CONCLUSION

It is elementary that the burden of proving the existence of a problem rests with the advocates. In the legal context they have raised, they have to show some evidence of a potential impact on the physical environment – not argument, not speculation, not theoretical academic studies, and not a theory that could apply somewhere else, but actual evidence that this specific project will cause a problem. However, they have provided no evidence that the Promenade conversion could have even a *potential* impact to the physical environment. Their arguments do not even make sense as regards Promenade, a luxury apartment complex whose conversion would *increase* the supply of what they claim to be interested in, affordable housing. There will be no impact, just another lawsuit seeking legal fees. We ask that the Council reject the advocates' appeal and modify the defense/indemnity provision to conform to the Map Act.

I and other representatives of the applicant will be present at your hearing to answer any questions you may have regarding this project. We thank you in advance for your favorable consideration.

Very truly yours,



Richard A. Schulman
HECHT SOLBERG ROBINSON GOLDBERG & BAGLEY LLP

RAS:cas

Enclosures: (1) Former City Attorney's attempted settlement of conversion litigation
(2) Documents from named cases
(3) Excerpts from previous staff report
(4) Resolution R-302242

cc (w/encls.):

Jeannette Temple, Development Services
Stephen Adams
Tony Dieli

CONDO CONVERSION SETTLEMENT AND RELEASE AGREEMENT

This Condo Conversion Settlement and Release Agreement ("Agreement") is made by and among the following parties: Affordable Housing Coalition of San Diego County, a California non-profit corporation, Citizens for Responsible Equitable Environmental Development, a California non-profit corporation, and Aida Reyes, an individual (collectively, "Citizen Groups"), on the one hand; and the City of San Diego ("City"), on the other hand.

ARTICLE I BACKGROUND RECITALS

1.01. Since January 1, 2004, City has approved applications submitted by various property owners (or their agents) to convert apartments within City's jurisdiction to condominiums ("Condo Conversions"). For each application, City determined that the project covered by the application was exempt from the California Environmental Quality Act ("CEQA").

1.02. Citizen Groups, City, an intervener, and various real parties in interest are litigants in those certain civil proceedings known as: (i) *Affordable Housing Coalition of San Diego County et al. v. City of San Diego et al.*, San Diego County Superior Court case no. GIC857723 and California Court of Appeal (Fourth District) case no. D049665 (the "Declaratory-Relief Proceeding"); (ii) *Citizens for Responsible Equitable Environmental Development et al. v. City of San Diego et al.*, San Diego County Superior Court case no. GIC858098 and California Court of Appeal (Fourth District) case no. D049637 ("CREED I"); (iii) *Citizens for Responsible Equitable Environmental Development et al. v. City of San Diego et al.*, San Diego County Superior Court case no. GIC871259 ("CREED II"); and (iv) *Citizens for Responsible Equitable Environmental Development et al. v. City of San Diego et al.*, San Diego County Superior Court case no. GIC876017 ("CREED III") (throughout this Agreement, the term "CREED Proceedings" refers collectively to CREED I, CREED II, and CREED III). In the Declaratory-Relief Proceeding and the CREED Proceedings, Citizen Groups have alleged, in general terms, that City erroneously determined that the Condo Conversions were exempt from CEQA. Currently there is a *bona fide* dispute between Citizen Groups and City over CEQA's applicability to the Condo Conversions.

1.03. Citizen Groups and City desire to settle the Declaratory-Relief Proceeding once and for all in order to avoid the expense and delay of litigation and without admission of liability. Citizen Groups and City also desire to limit City's exposure to an award of attorney fees and other legal expenses in Citizen Groups' favor in the CREED Proceedings while allowing Citizen Groups to pursue all their rights and claims against the real parties in interest in the CREED Proceedings.

1.04. Nothing in this Agreement is intended to limit any of Citizen Groups' rights to relief or to recover attorney fees and other legal expenses against any litigant other than City in the CREED Proceedings.

1.05. The specific terms and conditions of this Agreement, as set forth in detail below, are intended to satisfy the respective desires of Citizen Groups and City.

Against this background and for a valuable consideration, the receipt and sufficiency of which is now acknowledged, the Parties agree as follows:

ARTICLE 2 OBLIGATIONS OF CITY

2.01. Docketing Ordinances for City Council Consideration: Not more than 30 days after the execution of this Agreement, City shall docket the following ordinances for consideration in open session by the city council:

A. An ordinance that prohibits the conversion of more than 1,000 rental housing units to condominiums per calendar year in the City of San Diego (regardless of the rental rates charged for the units), with the ordinance to be identical to Exhibit "A" to this Agreement in all material respects (the "Conversion-Limitation Ordinance");

B. An ordinance that requires City, prior to approval of any application for the conversion of rental housing units to condominiums (including but not limited to issuance of a tentative map or a tentative-map waiver), to survey the tenants of the units and issue an annual report on the results of the surveys, with the ordinance to be identical to Exhibit "B" to this Agreement in all material respects (the "Tenant-Survey Ordinance"); and

C. An ordinance requiring adequate security (other than a mere encumbrance) to ensure the completion of building improvements required as a condition of any tentative map or tentative-map waiver for the conversion of rental housing units to condominiums, with the ordinance to be identical to Exhibit "C" to this Agreement in all material respects (the "Improvements-Surety Ordinance").

2.02. Reimbursement of Citizen Groups' Legal Expenses: Not more than 30 days after City is served with a file-stamped copy of the Request for Dismissal described in Paragraph 4.01, City shall cause a payment of \$75,000.00 to be made to "Briggs Law Corporation Trust Account" for the benefit of Citizen Groups and as reimbursement of their attorney fees and other legal expenses in the Declaratory-Relief Proceeding.

2.03. Adherence to Judgment in CREED Proceedings; Waiver of Appeal: City shall be bound by and adhere to any and all judgments that may be entered in the CREED

Proceedings, and City now unconditionally, unequivocally, and forever waives its right to appeal any and all such judgments.

ARTICLE 3

CONDITIONS AND CONTINGENCIES OF AGREEMENT

3.01. Conditions of Settlement Agreement: Subject to Paragraph 3.02, the following conditions shall be satisfied before any of the obligations set forth in Article 4 shall become binding on Citizen Groups: (a) the Conversion-Limitation Ordinance shall have been adopted and fully gone into effect throughout the City of San Diego; (b) the Tenant-Survey Ordinance shall have been adopted and fully gone into effect throughout the City of San Diego; and (c) the Improvements-Surety Ordinance shall have been adopted and fully gone into effect throughout the City of San Diego. As used in this paragraph, the term "fully gone into effect" shall mean gone into effect and all applicable statutes of limitation for challenging the ordinances in court have run without the commencement of any such challenge. Not more than 10 days after each ordinance goes into effect, City shall give Citizen Groups written notice of the first day on which the ordinance went into effect. None of the ordinances need be adopted or go into effect on the same day.

3.02. Contingencies for City's Failure to Satisfy Conditions: If all conditions identified in Paragraph 3.01 are not satisfied, Citizen Groups may nevertheless elect to treat the conditions as having been satisfied, elect to extend City's deadline for satisfying the conditions, or both. Such election shall be made in a writing signed by Citizen Groups, with notice of the election to be given to City. City's acceptance of Citizen Groups' election shall be effective upon delivery of notice of the election to City.

3.03. Contingencies for Litigation Challenging Ordinances: If any of the ordinances described in Paragraph 3.01 or as modified and adopted pursuant to Paragraph 3.02 is challenged in court, City shall use its best efforts to defend the challenged ordinances, even if Citizen Groups are not parties to the challenge. If Citizen Groups are not named as parties in any challenge, they may nevertheless seek the court's permission to intervene. City shall not oppose or otherwise object to such intervention.

ARTICLE 4

OBLIGATIONS OF CITIZEN GROUPS

4.01. Dismissal of Declaratory-Relief Proceeding: Not more than ten days after all the conditions set forth in Article 3 have been satisfied, Citizen Groups shall cause a Request for Dismissal to be submitted for filing in the Declaratory-Relief Proceeding. The Request for Dismissal shall dismiss the Declaratory-Relief Proceeding with prejudice on all claims and against all parties. Upon receipt of a file-stamped Request for Dismissal from the court, Citizen Groups shall promptly provide a copy of the Request for Dismissal to City.

4.02. City's Opposition to CREED Proceedings; Citizen Groups' Legal Expenses: City shall not oppose any aspect of the CREED Proceedings, unless and except to the extent that City is ordered to do so by a court of competent jurisdiction. Based on City's non-opposition and *Wal-Mart Real Estate Business Trust v. City Council of City of San Marcos*, 132 Cal. App. 4th 614 (2005), Citizen Groups agree not to apply for an award of attorney fees or other legal expenses against City in any of the CREED Proceedings.

ARTICLE 5 RELEASE OF LIABILITY

5.01. Mutual Release: Except as otherwise expressly provided in Paragraph 5.03, the Parties, for themselves, and for each of their predecessors, successors, assigns, partners, agents, heirs, executors, administrators and others claiming through or under them, now irrevocably and unconditionally remise, release, acquit, absolve, and forever discharge one another, and each and all of one another's predecessors, successors, assigns, affiliates, heirs, executors, administrators, shareholders, directors, officers, associates, agents, attorneys, employees, insurers, partners, associated companies, subsidiary companies, parent companies, and representatives (present and former), and all persons who at any time have acted by, through, under, or in concert with any or all of the foregoing persons and entities, of and from any and all causes of action in law or in equity, debts, contracts, charges, complaints, claims, suits, damages, obligations, promises, agreements, losses, costs, controversies, judgments, and expenses that were alleged by or asserted by or against any of the Parties in or as a result of the Declaratory-Relief Proceeding, including without limitation any and all claims for abuse of process or malicious prosecution.

5.02. Waiver of Unknown Claims: Except as otherwise expressly provided in Paragraph 5.03, the Parties now waive all rights and benefits that they have under Section 1542 of the California Civil Code. Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The Parties acknowledge (i) that they are aware that they may subsequently discover facts in addition to or different from those that they now know or believe to exist with respect to the matters covered by Paragraph 5.01; and (ii) that such different or additional facts, if they exist, may have given or may subsequently give rise to causes of action, claims, demands, controversies, damages, losses, costs, and expenses that are presently unknown, unanticipated, and unsuspected. The Parties therefore affirm that the releases contained in Paragraph 5.01 have been negotiated and agreed upon in light of that acknowledgment.

5.03. Reservation of Rights and Claims: Except as otherwise expressly provided in this Agreement, nothing in Paragraph 5.01 or 5.02 constitutes, and nothing in it shall be deemed to constitute, a waiver, remise, release, acquittal, absolution, discharge, or other relinquishment of any rights or claims that Citizen Groups may have, either individually or collectively, against City with respect to (i) City's 2005-2010 Housing Element, (ii) the validity of the Housing Element's adoption, or (iii) any of the CREED Proceedings. Furthermore, nothing in Paragraph 5.01 or 5.02 shall (i) inure to the benefit of any person (natural or otherwise) who is not a party to this Agreement or (ii) be deemed to limit any of Citizen Groups' rights or claims in or otherwise pertain in any way to any of the CREED Proceedings.

ARTICLE 6 GENERAL PROVISIONS

6.01. Reliance on Representations/Warranties: Each representation and warranty made in this Agreement by any of the Parties has substantially induced the other Parties to enter into this Agreement. Each Party acknowledges and affirms that the other Parties are entitled to rely on that Party's representations and warranties without independent verification and that such reliance is reasonable under the circumstances of this Agreement.

6.02. Integration: This Agreement constitutes and contains the entire agreement and understanding between the Parties concerning the subject matter addressed herein. Unless otherwise expressly stated herein, this Agreement supersedes and replaces all prior negotiations and all agreements, proposed or otherwise, whether written or oral, concerning its subject matter.

6.03. Cooperation: The Parties shall cooperate in performing their obligations under this Agreement, execute all supplementary documents that may be required or convenient to the fulfillment of their obligations, and take all additional actions that may be necessary or appropriate to give full force and effect to the terms and conditions of this Agreement and that are not inconsistent with such terms and conditions.

6.04. Notices: Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to any of the Parties shall, unless otherwise required by law, be in writing and be deemed duly served and given (i) when personally delivered to the Party to whom it is directed; or (ii) when deposited with the United States Postal Service and sent via certified mail (return receipt requested) with first-class postage prepaid. The following addresses shall be used for any and all notices:

For Citizen Groups

Secretary

Affordable Housing Coalition of San Diego County
5083½ Logan Avenue
San Diego, CA 92105

and

Secretary
Citizens for Responsible Equitable Environmental
Development
5663 Balboa Avenue, No. 376
San Diego, CA 92111-2705

and

Aida Reyes
Briggs Law Corporation
99 East "C" Street, Suite 111
Upland, CA 91786

and

Cory J. Briggs
Briggs Law Corporation
99 East "C" Street, Suite 111
Upland, CA 91786

For City

Office of the Mayor
City of San Diego
202 C Street, 11th Floor
San Diego, CA 92101

and

Malinda R. Dickenson
Office of the City Attorney
1200 Third Avenue, Suite 1500
San Diego, CA 92101

However, any Party may change the address to which notices or other communications are to be given under this Agreement by sending a notice of the change to the other Parties at their last address to have been designated under this Agreement.

6.05. Time Calculations: Time is of the essence to this Agreement. Whenever a time for performance of any act is stated in this Agreement, the time shall be calculated based on calendar days. However, if any deadline falls on a Saturday, Sunday, or legal holiday, the deadline shall be the next business day.

6.06. Mutual Drafting, Use of Titles: The Parties participated equally in negotiating and drafting this Agreement, and nothing in it shall be construed against any particular Party on the basis that this Agreement was drafted by that Party. Headings and titles are used

throughout this Agreement solely for the convenience of the Parties and are not an integral part of it.

6.07. Severability: If any term, condition other than a condition set forth in Paragraph 3.01, or application of this Agreement is held to be invalid, such invalidity shall not affect the Agreement's other terms, conditions, or applications that can be given effect without the invalid term, condition, or application. To this end, the Agreement is declared to be severable.

6.08. Waiver/Modification/Remedy Selection: No waiver of any breach of any term or condition of this Agreement shall be, nor shall it be construed to be, a waiver of any other breach of this Agreement, and no waiver shall be binding unless made in writing and signed by the Party waiving the breach. No change in the terms or conditions of this Agreement shall have any force or effect unless expressed in a writing signed by the Parties. A Party's pursuit or enforcement of fewer than all available remedies in the event of any breach or default under this Agreement shall not preclude that Party from pursuing or enforcing other or all available remedies in the event of any other breach or default under this Agreement. Each Party waives any and all requirements for the posting of a bond or other undertaking in the event that injunctive relief is granted against the Party. Any other provision of this Agreement notwithstanding, the Parties may not modify any aspect of this Agreement as it relates to the right of Briggs Law Corporation, as the attorney for Citizen Groups, to recover attorney fees or other legal expenses in the Declaratory-Relief Proceeding or any of the CREED Proceedings unless the modification is in writing and signed by an authorized officer of Briggs Law Corporation.

6.09. Persons/Entities Bound: This Agreement shall be binding on and inure to the benefit of the Parties, jointly and severally, in every capacity whatsoever, and to their heirs, legatees, devisees, beneficiaries, administrators, executors, trustees, successors, assigns, managers, members, officers, directors, shareholders, employees, agents, attorneys, servants, and legal representatives. However, there shall be no, and the Parties intend that there be no, third-party beneficiaries under this Agreement.

6.10. Dispute Resolution: If any dispute arises out of or in connection with this Agreement, the dispute shall be prosecuted in the San Diego County Superior Court (Central District).

6.11. Efficacy of Copy: This Agreement may be executed in counterparts, and each executed counterpart shall have the efficacy of a signed original. Photographic duplications of executed counterparts may be used, in the absence of any genuine issue as to their authenticity, in lieu of originals for any purpose. Each Party's executing signature may be transmitted to the others via facsimile, and such facsimile signature shall have the same effect as an original signature.

6.12. Effective Date: Unless otherwise explicitly set forth above, this Agreement shall take effect immediately upon its having been signed by each of the Parties.

6.13. Governing Law: This Agreement shall be governed by, and all rights and liabilities under it shall be determined in accordance with, the laws of the State of California.

6.14. Advice of Counsel: Each of the Parties has read this Agreement in its entirety; each Party has had a reasonable opportunity to consult, and has consulted, an independent counsel of his choice with regard to the nature of this Agreement and the fairness and propriety of its terms and provisions; the terms and provisions of this Agreement have been explained to each Party by his respective counsel; and each Party agrees to the terms and provisions hereof knowingly and voluntarily.

6.15. Legal Expenses: Except as otherwise expressly provided in this Agreement, City and Citizen Groups shall each bear their respective attorney fees and other legal expenses incurred in connection with (i) the Declaratory-Relief Proceeding and (ii) the negotiation, execution, and enforcement of this Agreement. Except as otherwise expressly provided in this Agreement, nothing in this Agreement affects City's or Citizen Groups' respective rights to recover attorney fees or other legal expenses as permitted by law in any of the CREED Proceedings.

6.16. Authority to Bind: Each person signing this Agreement represents that he or she has full legal authority to bind the Party on whose behalf the person signs.

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WE HAVE READ AND AGREE TO THE FOREGOING IN ITS ENTIRETY.

**Affordable Housing Coalition of San
Diego County**

Date: _____, 20____
By: Richard Lawrence, President

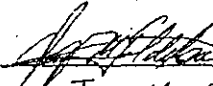
**Citizens for Responsible Equitable
Environmental Development**

Date: _____, 20____
By: Richard Lawrence, President

Aida Reyes

Date: _____, 20____
By: Aida Reyes

City of San Diego

Date: 3-28, 2007. 
By: Jay M. Goldstone, CFO

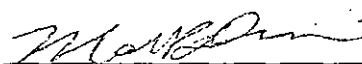
I, Cory J. Briggs, as the attorney for Affordable Housing Coalition of San Diego County, Citizens for Responsible Equitable Environmental Development, and Aida Reyes, approve the form of this Agreement.

Date: _____, 20____
Cory J. Briggs

I, Ann E. Menasche, as the attorney for Affordable Housing Coalition of San Diego County and Aida Reyes, approve the form of this Agreement.

Date: _____, 20____
Ann E. Menasche

I, Malinda R. Dickenson, as the attorney for City of San Diego, approve the form of this Agreement.

Date: 3/29, 2007. 
Malinda R. Dickenson

WE HAVE READ AND AGREE TO THE FOREGOING IN ITS ENTIRETY.

**Affordable Housing Coalition of San
Diego County**

Date: March 19, 2007

Richard Lawrence
By: Richard Lawrence, President

**Citizens for Responsible Equitable
Environmental Development**

Date: March 19, 2007

Richard Lawrence
By: Richard Lawrence, President

Aida Reyes

Date: _____, 20____

By: Aida Reyes

City of San Diego

Date: _____, 20____

By: _____

I, Cory J. Briggs, as the attorney for Affordable Housing Coalition of San Diego County, Citizens for Responsible Equitable Environmental Development, and Aida Reyes, approve the form of this Agreement.

Date: _____, 20____

Cory J. Briggs

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Date: _____, 20____

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Date: _____, 20____

Malinda R. Dickenson

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**Affordable Housing Coalition of San
Diego County**

Date: _____, 20____
By: Richard Lawrence, President

**Citizens for Responsible Equitable
Environmental Development**

Date: _____, 20____
By: Richard Lawrence, President

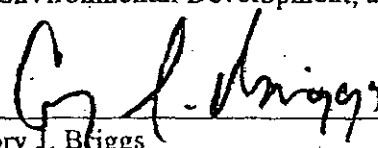
Aida Reyes

Date: _____, 20____
By: Aida Reyes

City of San Diego

Date: _____, 20____
By: _____

I, Cory J. Briggs, as the attorney for Affordable Housing Coalition of San Diego County, Citizens for Responsible Equitable Environmental Development, and Aida Reyes, approve the form of this Agreement.

Date: MARCH 19, 2007 
Cory J. Briggs

I, Ann E. Menasche, as the attorney for Affordable Housing Coalition of San Diego County and Aida Reyes, approve the form of this Agreement.

Date: _____, 20____
Ann E. Menasche

I, Malinda R. Dickenson, as the attorney for City of San Diego, approve the form of this Agreement.

Date: _____, 20____
Malinda R. Dickenson

WE HAVE READ AND AGREE TO THE FOREGOING IN ITS ENTIRETY.

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Diego County**

Date: _____, 20____
By: Richard Lawrence, President

**Citizens for Responsible Equitable
Environmental Development**

Date: _____, 20____
By: Richard Lawrence, President

Aida Reyes

Date: _____, 20____
By: Aida Reyes

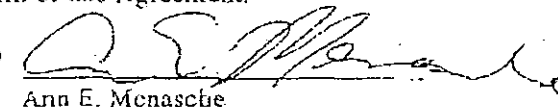
City of San Diego

Date: _____, 20____
By: _____

I, Cory J. Briggs, as the attorney for Affordable Housing Coalition of San Diego County, Citizens for Responsible Equitable Environmental Development, and Aida Reyes, approve the form of this Agreement.

Date: _____, 20____
Cory J. Briggs

I, Ann E. Menasche, as the attorney for Affordable Housing Coalition of San Diego County and Aida Reyes, approve the form of this Agreement.

Date: March 19, 2007 
Ann E. Menasche

I, Malinda R. Dickenson, as the attorney for City of San Diego, approve the form of this Agreement.

Date: _____, 20____
Malinda R. Dickenson

Exhibit "A"
Conversion-Limitation Ordinance

=====

San Diego Municipal Code

Chapter 14: General Regulations

Article 4: Subdivision Regulations
Division 5: Condominium Conversion Regulations

§144.0501 Purpose of Condominium Conversion Regulations

The purpose of the Condominium Conversion Regulations is to allow the conversion of apartments to condominiums while limiting the number of conversions per year and protecting the interests of tenants by requiring that tenants receive adequate notice of proposed condominium conversions, are advised of their rights with respect to the conversion of their apartment to a condominium, and are afforded reasonable relocation assistance. It is also the intent of these regulations to protect the interests of the community and prospective purchasers by requiring the *applicant* to provide certain information regarding the condition of the *structure* and to require reasonable improvements for the health, safety, and general welfare of the public.

§144.05** Conversion-Limitation Ordinance

(a) Subject to paragraph (b), No more than 1,000 residential rental units may be approved as condominium conversions per calendar year. If fewer than 1,000 residential rental units are approved as condominium conversions in a calendar year, the balance shall not carry forward to any subsequent year.

(b) The number of residential rental units that may be approved as condominium conversions for the remainder of the calendar year in which this section first takes effect shall be a fraction of the limitation in paragraph (a) based on the number of days remaining in the year divided by 365, rounded up to the nearest whole number.

(c) Applicants seeking approval of proposed condominium conversions in a particular calendar year shall submit their applications to the City during the month of December immediately prior to the year for which approval is sought. Applicants whose applications are not selected for approval in a particular calendar year may resubmit their applications for selection for approval in the following calendar year.

(d) The limitations and procedures set forth in this section shall not apply to applicants proposing to convert residential rental units to condominiums whose

Exhibit "B"
Tenant-Survey Ordinance

=====

San Diego Municipal Code

Chapter 14: General Regulations

Article 4: Subdivision Regulations
Division 5: Condominium Conversion Regulations

§144.05** **Tenant-Survey Ordinance**

(a) All tenants of proposed condominium conversions shall, either by personal delivery or first-class mail, be served by the applicant with a voluntary written survey¹ from the San Diego Housing Commission seeking information about the effects that the proposal may have on the tenants. The survey form shall be accompanied by a pre-addressed, postage-paid envelope for returning the survey to the Housing Commission.

(b) No proposed condominium conversion may be approved until at least 90 days after the last date of service of the survey on the tenants of the apartments that are the subject of the proposal, and until any and all persons serving the survey forms have provided the City with written proof of service under penalty of perjury under the laws of the State of California based on personal knowledge and not information and belief.

(c) The Housing Commission shall issue an annual public report no later than March 1 summarizing all survey responses received during the prior calendar year and identifying the location and number of all proposed condominium conversions for which a survey response was received during the prior year. The Housing Commission shall be entitled to recoup all costs of surveying tenants of proposed condominium conversions and a pro rata share of all costs of issuing its annual report from each applicant. The costs shall be determined by the Housing Commission annually, and may be adjusted from time to time as the Housing Commission deems necessary or appropriate, based on a reasonable estimate of the costs for conducting the survey and issuing the annual report. The applicant shall provide the City with written proof of payment of the costs of the survey and the pro rata share of the costs for the annual report prior to the approval of any proposed condominium conversion.

¹ [Among other things, the survey shall ask questions about the potential effects of conversion on the tenants and attempt to elicit contact information from them so that they can be contacted after they are evicted (e.g., a relative's or friend's address and phone number).]

(d) The survey responses shall be available to the public under the California Public Records Act, with the respondent's name redacted if he or she has requested on the survey form that the name be kept confidential. The survey form shall include a field in which the respondent can indicate whether his or her name is to be kept confidential.

=====

[N.B.: (1) The language of this ordinance assumes that the final ordinance, if adopted, will be codified in the division in the San Diego Municipal Code indicated above the ordinance. Accordingly, the language is intended to be applicable to all development currently described in that division. (2) The language to be added to the current Municipal Code is underlined; non-underlined language, if any, already exists in the Municipal Code.]

Exhibit "C"
Improvements-Surety Ordinance

=====

San Diego Municipal Code

Chapter 14: General Regulations

Article 4: Subdivision Regulations
Division 5: Condominium Conversion Regulations

§144.0507 Development Regulations for Condominium Conversions

[There is no change to paragraphs (a) through (f).]

(g) If all improvements required under paragraphs (a) through (f) have not been completed when the applicant applies for a final map under section 125.0640, the final map may be approved, notwithstanding the fact that the improvements have not been made, provided that both of the following conditions are satisfied prior to approval of the final map:

(1) The applicant has provided a surety bond or other undertaking in a form acceptable to the City for the benefit of the City and any and all future purchasers of the units being converted.

(2) The applicant has provided the City with a certified copy of a recorded declaration of conditions, covenants, and restrictions against each unit being converted that prohibits the sale of the unit until the City Engineer has determined in writing that the required improvements have been made. The declaration shall be recorded in the Office of the County Recorder for the County of San Diego, in a form to be prescribed by the Office of the City Attorney.

[This space is intentionally blank.]

[N.B.: (1) The language of this ordinance assumes that the final ordinance, if adopted, will be codified in the division in the San Diego Municipal Code indicated above the ordinance. Accordingly, the language is intended to be applicable to all development currently described in that division. (2) The language to be added to the current Municipal Code is underlined; non-underlined language, if any, already exists in the Municipal Code.]

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Disposition

Affordable Housing Coalition of S.D. Co. et al. v. City of San Diego
Case Number **D049665**

Description:	Voluntary dismissal
Date:	12/27/2007
Status:	Final
Publication Status:	
Author:	
Participants:	
Case Citation:	

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Court data last updated: 08/14/2008 01:05 PM

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Disposition

Citizens For Responsible Equitable Development et al. v. City of San Diego et al.

Case Number [D049637](#)

Description:	Voluntary dismissal
Date:	07/13/2007
Status:	Partial
Publication Status:	
Author:	
Participants:	
Case Citation:	

Description:	Voluntary dismissal
Date:	12/27/2007
Status:	Final
Publication Status:	
Author:	
Participants:	
Case Citation:	

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SAN DIEGO, CA

BRIGGS LAW CORPORATION [FILE: 1007.07]
Cory J. Briggs (State Bar no. 176284)
99 st "C" Street, Suite 111
U. ad, CA 91786
Telephone: 909-949-7115

Attorney for Plaintiff and Petitioner Citizens for
Responsible Equitable Environmental Development

ORIGINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO--CENTRAL DIVISION

GIC

CASE NO.

869677

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND PETITION FOR WRIT
OF MANDATE**

[California Public Records Act]

CITIZENS FOR RESPONSIBLE
EQUITABLE ENVIRONMENTAL
DEVELOPMENT,

Plaintiff and Petitioner,

vs.

CITY OF SAN DIEGO and DOES 1 through

Defendants and Respondents.

Plaintiff and Petitioner Citizens for Responsible Equitable Environmental Development
("Plaintiff") alleges as follows against Defendants and Respondents City of San Diego and DOES 1
rough 100 (collectively, "Defendants"):

Introductory Statement

1. Plaintiff brings this action under the California Public Records Act ("Act"). Plaintiff
submitted a written request to examine and obtain certain public records pertaining to the conversion
of condominiums to apartments in the City of San Diego, but Defendants have failed to permit Plaintiff
to do so.

Parties

2. Petitioner is a non-profit corporation formed and operating under the laws of the State of California. Its purpose is, among other things, to advocate for responsible and equitable environmental development, land use, and planning on behalf of the public.

3. Defendant City of San Diego ("City") is a "public agency" under the Act.

4. The true names and capacities of the Defendants sued as DOES 1 through 100 are unknown to Plaintiff, who will seek leave of this Court to amend this pleading to allege the true names and capacities as soon as they are ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named Defendant is responsible in some manner for the acts or omissions alleged in this pleading and that Plaintiff's injuries were proximately caused by the acts or omissions of each such Defendant.

5. Plaintiff is informed and believes and on that basis alleges that, at all times stated in this pleading, each Defendant was the agent, servant, or employee of each other Defendant and was, in doing the things alleged in this pleading, acting within the scope of said agency, servitude, or employment and with the full knowledge or subsequent ratification of his principals, masters, and employers. Alternatively, in doing the things alleged in this pleading, each Defendant was acting alone and solely to further his own interests.

Jurisdiction and Venue

6. The Court has jurisdiction over this action pursuant to Government Code Sections 6258 and 6259, Code of Civil Procedure Section 1060 *et seq.*, and Code of Civil Procedure Section 1084 *et seq.*

7. Venue in this Court is proper because the obligations, liabilities, and violations of law alleged in this pleading occurred in the City of San Diego.

FIRST CAUSE OF ACTION:

Violation of the California Public Records Act

(Against All Defendants)

8. Paragraphs 1 through 7 are fully incorporated into this paragraph.

9. On or about May 30, 2006, Plaintiff submitted a letter to Defendants requesting to examine and obtain copies of various public records. Plaintiff also submitted a copy of its request during a meeting of the City Council of the City of San Diego on June 13, 2006. A true and correct copy of Plaintiff's request is attached to this pleading as Exhibit "A" and incorporated into it by reference.

10. Defendants have not responded to Plaintiff's request, even though receipt of the request has been acknowledged by at least one representative of Defendants.

11. Defendants' failure to permit Plaintiff to examine and obtain copies of the requested public records is unlawful under the Act.

12. Plaintiff has been damaged as a result of Defendants' unlawful refusal to permit it to examine and obtain copies of the requested public records.

SECOND CAUSE OF ACTION:

Declaratory Relief under Code of Civil Procedure Section 1060 *et seq.*

(Against All Defendants)

13. Paragraphs 1 through 12 are fully incorporated into this paragraph.

14. An actual controversy exists between Plaintiff, on the one hand, and Defendants, on the other hand, concerning their respective rights and duties under the Act. As alleged in this pleading, Plaintiff contends that the requested public records should be disclosed and are not exempt from disclosure under the Act. Plaintiff is informed and believes and on that basis alleges that Defendants dispute Plaintiff's contention and maintain that the requested public records need not be disclosed.

15. Plaintiff desires a judicial determination and declaration as to whether the requested public records are subject to disclosure under the Act.

THIRD CAUSE OF ACTION:

Writ of Mandate under Code of Civil Procedure Section 1084 *et seq.*

(Against All Defendants)

16. Paragraphs 1 through 15 are fully incorporated into this paragraph.

17. The Act requires Defendants to permit Plaintiff to examine and obtain copies of all public records that are not exempt from disclosure.

18. Defendants had and continue to have a mandatory legal duty to permit Plaintiff to examine and obtain copies of the requested public records because they are public records that are not exempt from disclosure. Defendants' persistence in failing to permit Plaintiff to examine and obtain copies of the requested public records violates the Act and denies Plaintiff of public information to which it is entitled under the Act.

Prayer

For all these reasons, Plaintiff respectfully prays for the following relief against Defendants jointly and severally:

1. On the First Cause of Action:

- A. Preliminary and permanent injunctive relief directing Defendants to permit Plaintiff to examine and obtain copies of the requested public records; and
- B. An order determining and declaring that Defendants' failure to permit Plaintiff to examine and obtain copies of the requested public records does not comply with the Act;

2. On the Second Cause of Action:

- A. An order determining and declaring that Defendants' failure to permit Plaintiff to examine and obtain copies of the requested public records does not comply with the Act;

3. On the Third Cause of Action:

- A. A writ of mandate (i) ordering each Defendant to comply with the Act and (ii) prohibiting each of them from refusing to permit Plaintiff to examine and obtain copies of the requested public records;

4. On All Causes of Action:

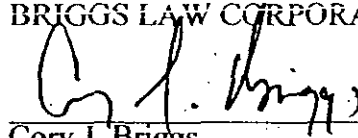
- A. An order providing for the Court's continuing jurisdiction over this action in order to ensure that Defendants comply with the Act and all other applicable laws;
- B. All attorney fees and other legal expenses incurred by Plaintiff in the prosecution of this action; and
- C. Any further relief that this Court may deem appropriate.

Date: July 25, 2006.

Respectfully submitted,

BRIGGS LAW CORPORATION

By:


Cory J. Briggs

Attorney for Plaintiff and Petitioner Citizens for
Responsible Equitable Environmental Development

BRIGGS LAW CORPORATION

San Diego Office:
Balboa Avenue, No. 376
San Diego, CA 92111-2705

Telephone: 858-495-9082
Facsimile: 858-495-9138

Please respond to: Inland Empire Office

Inland Empire Office:
99 East "C" Street, Suite 111
Upland, CA 91786

Telephone: 909-949-7115
Facsimile: 909-949-7121

BLC File(s): 1007.02

30 May 2006

Mayor Jerry Sanders
Members of the City Council
City of San Diego
202 C Street, 2nd Floor
San Diego, CA 92101

Michael J. Aguirre, City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, CA 92101

Re: Information Request for Appeals of Environmental Determinations for Condo Conversions

Dear Mayor Sanders, Council Members, and Mr. Aguirre:

As you know, I represent Affordable Housing Coalition of San Diego County and Citizens for Responsible Equitable Environmental Development in connection with numerous appeals of the City of San Diego's determination that condo conversions are exempt from the California Environmental Quality Act. So that my clients will be fully prepared for the hearings on the appeals, I am writing to ask that the City provide responses and access to public records for each of the items on the attached *Information Request for Condo Conversions*. This information request pertains to each of the projects listed on the attached *Appeals Scheduled for June 13, 2006*.

To the extent necessary for my clients to gain access to the requested information, please consider this request to be submitted under the California Public Records Act, even though the information is also requested as part of my clients' rights to due process and under the California Environmental Quality Act.

Because of the hearing scheduled for June 13, 2006, on 80 separate appeals, time is of the essence in providing the requested information to my clients. (This request in no way prejudices my objection--submitted simultaneously with this request--to scheduling 80 appeals for a single hearing on June 13, 2006.)

Sincerely,

BRIGGS LAW CORPORATION

Cory J. Briggs

Cory J. Briggs



INFORMATION REQUEST FOR CONDO CONVERSIONS

1. What is the physical address of the project?
2. What is the total acreage of the project?
3. What is the number of existing residential units for the project?
4. What is the number of residential units that will exist upon completion of the conversion?
5. What is the age of each structure comprising the project?
6. How many parking spaces are currently provided by the project?
7. How many parking spaces are estimated to be provided upon completion of the conversion?
8. What is the number of bedrooms and bathrooms for each residential unit of the project before and (as estimated) upon completion of the conversion?
9. How many daily vehicle trips are currently generated on each street providing ingress or egress access to the project and on each major street within 1/4 mile of the project?
10. How many school-age children currently live at the project?
11. What is the name and location of each public school attended by children residing at the project?
12. What is the bus route (including times and stops) for each bus that transports children residing at the project to school?
13. What is the average amount of electricity currently consumed by all users (including but not limited to residential units and common areas) on a monthly basis?
14. What is the average amount of electricity estimated to be consumed by all users (including but not limited to residential units and common areas) on a monthly basis after completion of the conversion?

15. What is the number of residential units approved for conversions in the last 36 months within a one-mile radius of the project?
16. What is the number of residential units within a one-mile radius of the project for which a conversion application is currently pending?
17. What is the number of residential units approved for conversions in the last 36 months anywhere in the City of San Diego?
18. What is the number of residential units that are the subject of pending applications for approval of conversions in the City of San Diego?
19. What is the number of residential units previously rented as apartments but sold as condominiums in the City of San Diego in the last 36 months that did not require approval from the City of San Diego under the Subdivision Map Act?
20. What is the number of persons living within the project at the time that an application for approval was submitted who are considered "extremely low income," "very low income," "low income," and "moderate income"?
21. How many persons living within the project at the time that a conversion application for approval was submitted are disabled?
22. How many minor-age children are currently living in a unit proposed to be converted as part of the project?
23. How many persons living in a unit proposed to be converted are over 62 years of age?
24. What is the average distance traveled by each current resident of the project to/from work or school (one direction only) per day?
25. What is the average distance estimated to be traveled by each current resident of the project to/from work or school (one direction only) per day based if the resident does not purchase one of the units at the project?
26. How many cars are owned by persons currently living at the project?

27. How many cars (as estimated) will be owned by persons living at the project after completion of the conversion?
28. How many cars were owned by persons living at the project at the time the condo-conversions application was submitted?
29. How many people currently living at the project use public transportation as their primary means of transportation?
30. Please describe all construction (including both repairs and improvements) to be made at the project in any way connected to the condo conversion.
31. How many residential rental units have been built within a one-mile radius of the project and were issued a certificate of occupancy in the last 36 months?
32. How many residential rental units have been built within a two-mile radius of the project and were issued a certificate of occupancy in the last 36 months?
33. How many residential rental units have been built within a five-mile radius of the project and were issued a certificate of occupancy in the last 36 months?
34. How many residential rental units have been built within a ten-mile radius of the project and were issued a certificate of occupancy in the last 36 months?
35. How many residential rental units have been built anywhere in the City of San Diego and were issued a certificate of occupancy in the last 36 months?
36. How many residential rental units are estimated to be built within a one-mile radius of the project in the next 36 months?
37. How many residential rental units are estimated to be built within a two-mile radius of the project in the next 36 months?
38. How many residential rental units are estimated to be built within a five-mile radius of the project in the next 36 months?
39. How many residential rental units are estimated to be built within a ten-mile radius of the project in the next 36 months?

40. How many residential rental units are estimated to be built anywhere in the City of San Diego in the next 36 months?
41. How many persons currently living at the project will have to relocate outside the City of San Diego in order to find replacement housing that is within their budget? ("Replacement housing" means long-term replacement housing, as opposed to short-term temporary accommodations (e.g., hotels, guest rooms with family or friends, or other temporary living quarters).)
42. What is the median distance between the current project and the replacement-housing location for persons currently living at the project? ("Replacement housing" means long-term replacement housing, as opposed to short-term temporary accommodations (e.g., hotels, guest rooms with family or friends, or other temporary living quarters).)
43. What is the estimated highest level and duration of construction-related noise to which any resident (tenant or owner) will be exposed at the project?
44. What is the estimated average level and duration of construction-related noise to which any resident (tenant or owner) will be exposed at the project?
45. What is the estimated highest intensity and duration of vibrations to which any resident (tenant or owner) will be exposed at the project?
46. What is the estimated average intensity and duration of vibrations to which any resident (tenant or owner) will be exposed at the project?
47. What is the estimated increase in public-safety services (e.g., fire, police, or emergency medical services) required as a result of the project?
48. Please provide a copy of the environmental determination for the project.
49. What is the potential for exposing residents, workers, or other persons to asbestos at the project in connection with the conversion process?
50. How many units have applied for condominium maps or map waivers in the City of San Diego and in San Diego County during the years 2002-2005? (Data should be provided by community planning area and citywide if possible.)

51. How many units have been converted to condominiums in the City of San Diego City and in San Diego County during the years 2002- 2005? (Data should be provided by community planning area and citywide if possible.)
- a. How many of these were off-the-shelf (*i.e.*, map approved prior to 2002) as opposed to map approved and processed during this time frame?
52. How many new multi-family rental units were completed in the City of San Diego and in San Diego County during the years 2002-2005? (Data should be provided by community planning area and citywide if possible.)
53. What was the vacancy rate in rental units in San Diego during the years 2002-2005? (Data should be provided by community planning area and citywide if possible.)
54. What proportion of renters in projects undergoing conversion purchased a unit in the converted projects?
55. What proportion of residents displaced by condo conversions became homeless following the conversion?
- a. How many rented elsewhere?
- b. How many purchased elsewhere?
- c. For those who rented or purchased elsewhere, how long did it take for them to find their new housing?
56. What proportion of residents displaced by condo conversions left the City of San Diego after the displacement? How many left San Diego County?
57. What proportion of residents who purchased condo conversions moved into the City of San Diego? How many moved into San Diego County?
58. What proportion of residents displaced by conversion who had lived independently prior to the conversion, were forced to double-up (*i.e.*, move in with family or friends) after the displacement?
59. What is the number of tenants receiving relocation assistance?

60. How many people in the City of San Diego changed jobs or changed their children's school after being displaced by condo conversions?
61. How many people in the County of San Diego changed jobs or changed their children's school after being displaced by condo conversions?
62. How many people in the City of San Diego changed jobs or changed their children's school after purchasing condo conversions?
63. How many people in the County of San Diego changed jobs or changed their children's school after purchasing condo conversions?
64. What is the average income in the City of San Diego of displaced tenants over the age of 18?
 - a. What percentage is "extremely low income"?
 - b. What percentage is "very low income"?
 - c. What percentage is "low income"?
 - d. What percentage is "moderate income"?
65. What is the average income in the City of San Diego of purchasers of condo conversions over the age of 18?
 - a. What percentage is "extremely low income"?
 - b. What percentage is "very low income"?
 - c. What percentage is "low income"?
 - d. What percentage is "moderate income"?
66. What rent did residents displaced by a conversion in the City of San Diego pay before and after the conversion and displacement (among tenants who rented another unit after displacement)? (Data should be provided by community planning area and citywide if possible.)

67. How many bedrooms were in the units rented in the City of San Diego before the conversion and displacement (among tenants who rented another unit after displacement)? (Data should be provided by community planning area and citywide if possible.)
68. What is the average income of families living in units in projects in the City of San Diego undergoing conversion as opposed to average income of families living in the units after the conversion? (Data should be provided by community planning area and citywide if possible.)
69. How many comparable units at comparable rent are there in the same neighborhood in the City of San Diego as those proposed to be converted? (Data should be provided by community planning area and citywide if possible.)
70. What is average number of cars owned by residents of units in the City of San Diego before and after conversion? (Data should be provided by bedroom size.)
71. How far from employment did residents displaced by condo conversions in the City of San Diego live before and after the conversion?
72. How far from employment did residents purchasing condo conversions in the City of San Diego live before and after the purchase?
73. How far from their children's school did residents displaced by condo conversions in the City of San Diego live before and after the conversion?
74. How far from their children's school did residents purchasing condo conversions in the City of San Diego live before and after the purchase?
75. What is the primary mode of transportation of residents of units in the City of San Diego before and after conversion? (Data should be provided for both tenants and purchasers.)
76. How many condo conversion projects in the City of San Diego meet the current parking standards?
77. What is the average number of children in units that were converted in the City of San Diego before and after the conversion?

78. What is the average total number of persons residing in a unit in the City of San Diego that has undergone or will undergo conversion before and after the conversion?
79. What proportion of units in projects that have undergone conversion in the City of San Diego were initially occupied by the new owners for at least one year and what proportion of these units are rented out by the new owners?
80. Of the units in the City of San Diego that are rented out by individual owners following conversion, what was the average monthly rent (by bedroom size) of the units before and after the conversion?
81. What percentage of converted units are the owner's primary residence?
82. What percentage of renters whose units are being converted are people with disabilities?
83. What percentage of renters whose units are being converted are senior citizens?
4. What percentage of renters whose units are being converted are families with minor children?
85. What percentage of converted units are fully accessible to people with disabilities who use wheelchairs or have mobility impairments?
86. What percentage of converted-unit purchasers are first-time buyers?
87. What is the average purchase price in the City of San Diego for converted units on the market for the first time? (Data should be provided by community planning area and citywide if possible.)
88. What is the average length of time that converted units are on the market? (Data should be provided based on the age of the units.)
89. How many units that underwent conversion had significant improvements or renovations?
90. How many converted units met building standards in effect at the time of the conversion?

91. What is the maximum allowable density (*i.e.*, number of units) on sites where conversions are being proposed? What is the current number of units on the site?
92. What are the crime rates in neighborhoods/communities in the City of San Diego where 25 or more units were converted since 2002?
93. Please provide all studies and other analyses on which any responses to the above information requests are based. (I'd like to see all supporting material.)

OFFICE OF THE CITY ATTORNEY
Michael J. Aguirre (State Bar no. 60402)
Malinda R. Dickenson (State Bar no. 222564)
1200 Third Avenue, Suite 1500
San Diego, CA 92101

Exempt from filing fees (Gov't Code 6103)

F I L E D
Clerk of the Superior Court

OCT 10 2006

Attorneys for Defendant and Respondent City of San Diego.

By: Frances Brannigan
DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO—CENTRAL DIVISION

CITIZENS FOR RESPONSIBLE
EQUITABLE ENVIRONMENTAL
DEVELOPMENT,

Plaintiff and Petitioner,

vs.

CITY OF SAN DIEGO and DOES 1 through
100,

Defendants and Respondents.

CASE NO. GIC 869677

**STIPULATION AND ORDER UNDER
CODE OF CIVIL PROCEDURE
SECTION 664.6**

Action Filed: July 25, 2006

Trial Date: N/A

Department: 69 (Barton)

Plaintiff and Petitioner Citizens for Responsible Equitable Environmental Development and
Defendant and Respondent City of San Diego, by and through their respective attorneys of record,
stipulate as follows:

1. WHEREAS the parties have entered into that certain Settlement Agreement and Release dated October 2, 2006, which requires Plaintiff and Petitioner to dismiss this entire proceeding;
2. WHEREAS the Settlement Agreement and Release also requires the parties to take action that may not be fully performed prior to the dismissal of this proceeding; and
3. WHEREAS the parties desire for this Court to retain jurisdiction over them in order to enforce their Settlement Agreement and Release until performance in full of its terms or until October 2, 2008, whichever is shorter, even after this proceeding is dismissed;

1 IT IS NOW REQUESTED that the Court retain jurisdiction over the parties in order to enforce
2 the Settlement Agreement and Release until performance in full of its terms or until October 2, 2008,
3 whichever is shorter, even after this proceeding is dismissed.
4

5 Date: October 2, 2006.

Respectfully submitted,

6 BRIGGS LAW CORPORATION
7 Cory J. Briggs
8 Karen L. Skaret

9 By:


Cory J. Briggs

10 Attorney for Plaintiff and Petitioner Citizens for
11 Responsible Equitable Environmental Development

12 Date: October 2, 2006.

OFFICE OF THE CITY ATTORNEY
13 Michael J. Aguirre
14 Malinda R. Dickenson

15 By:


Malinda R. Dickenson

16 Attorneys for Defendant and Respondent City of San
17 Diego
18
19

20 FOR GOOD CAUSE, IT IS NOW ORDERED that the Court shall retain jurisdiction over the
21 parties to this action in order to enforce their Settlement Agreement and Release until performance in
22 full of its terms or until October 2, 2008, whichever is shorter, even after this proceeding is dismissed.
23

24 Date: 10-10-, 2006.


Judge of the Superior Court

25 JEFFREY B. BARTON
26
27
28

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

Date: 06/19/2008 Time: 08:30:00 AM Dept: C-74
Judicial Officer Presiding: Judge Linda B. Quinn
Clerk: Mary Jean Barham
Bailiff/Court Attendant:
RM:

Case Init. Date: 08/22/2006

Case No: GIC871259 Case Title: CITIZENS/RESPONSIBLE EQUITABLE ENV vs
CITY OF SAN DIEGO

Case Category: Civil - Unlimited Case Type: Toxic Tort/Environmental

Event Type: Motion Hearing (Civil)
Moving Party: CITIZENS/RESPONSIBLE EQUITABLE ENV, AFFORDABLE HOUSING COALITION/SD
COUNTY
Judicial Document & Date Filed: Trial Brief, 02/22/2008

Appearances:

The Court, having taken the above-entitled matter under submission on 05/19/2008 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now says as follows:

The Court grants the respective requests for judicial notice.

Petitioners and plaintiffs Citizens for Responsible Environmental Development and Affordable Housing Coalition of San Diego County ("petitioners") bring this writ application pursuant to Code of Civil Procedure § 1094.5 and challenge defendant and respondent City of San Diego's ("City") refusal to hold appeal hearings under the Subdivision Map Act and the San Diego Municipal Code on petitioners' CEQA grounds. The only issue before the Court is whether City unlawfully failed to hold administrative appeal hearings on Petitioners' non-CEQA grounds on the projects challenged in this proceeding.

Government. Code § 66452.5(d) of the Subdivision Map Act provides in pertinent part, that "[a]ny interested person adversely affected by a decision of the advisory agency...may file an appeal with the governing body...within 10 days after the action of the advisory agency which is the subject of the appeal." The Planning Commission is the advisory agency in this case; the City Council is the governing body. (City's request for judicial notice, Exhibits A, B, and C.)

San Diego Municipal Code § 112.0508 also required City to provide petitioners, who are "interested persons," with appeal hearings before the City Council. (City's request for judicial notice, Exhibit B.)

Date: 06/19/2008

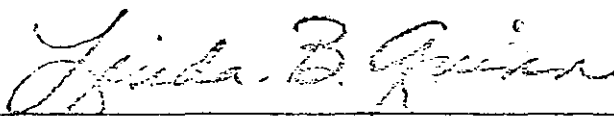
MINUTE ORDER

Page: 1

Dept: C-74

Calendar No.: 1

The Petition is denied as petitioner has failed to establish that all affected parties have been brought before the Court.



Judicial Officer Presiding: Judge Linda B. Quinn

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

Date: 07/09/2008

Time: 08:30:00 AM

Dept: C-74

Judicial Officer Presiding: Judge Linda B. Quinn
Clerk: Mary Jean Barham

Pliff/Court Attendant:
M:

Case Init. Date: 08/22/2006

Case No: GIC871259

Case Title: CITIZENS/RESPONSIBLE EQUITABLE ENV vs
CITY OF SAN DIEGO

Case Category: Civil - Unlimited

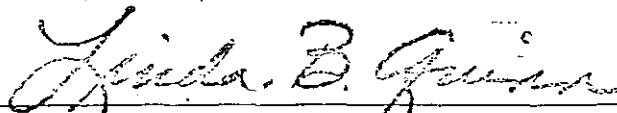
Case Type: Toxic Tort/Environmental

Case Type: Ex Parte

Appearances:

Court, having taken the above-entitled matter under submission on 07/08/1998 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Court issued its ruling on Petitioner's writ application pursuant to Code of Civil Procedure section 4.5 on June 19, 2008. That ruling is not amended. The "affected parties" referenced in the last line of the ruling are indispensable parties. Parties are indispensable to an action if their absence prevents the court from rendering any effective judgment or would seriously prejudice a person's interest by a judgment between the parties. The issue of the absence of indispensable parties is a matter of jurisdiction that can be raised at any time. The Petitioner must establish that the court has jurisdiction. The Petitioner did not present adequate proof at trial that all indispensable parties have been joined in the



Judicial Officer Presiding: Judge Linda B. Quinn

COUNTY OF SAN DIEGO
CENTRAL
MINUTE ORDER

Clark of the Superior Court

SEP 22 2008

Date: 09/22/2008

Time: 09:00:00 AM

Dept: C-74

By: M. BARHAM, Deputy

Judicial Officer Presiding: Judge Linda B. Quinn
Clerk: Mary Jean Barham

Bailiff/Court Attendant:
ERM: not reported

Case Init. Date: 08/22/2006

Case No: GIC871259

Case Title: CITIZENS/RESPONIBLE EQUITABLE ENV vs
CITY OF SAN DIEGO

Case Category: Civil - Unlimited

Case Type: Toxic Tort/Environmental

Event Type: Motion Hearing (Civil)

Causal Document & Date Filed:

Appearances:

The Court, having taken the above-entitled matter under submission on 09/05/1998 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Court denied the Petition on June 19, 2008 on the "non-CEQA" writ. The Court does not have jurisdiction to proceed with the "CEQA" writ claims in the case as the indispensable parties are also necessary to be named pursuant to Public Resource Code section 21167.6.5 as successors in interest to the recipient of the approval and as parties whose interests are not adequately represented by the recipient of the approval, 4165 Mississippi LLC.

Petitioner's Motion to Strike the Cost Memorandum of the Respondent is denied.

Respondent's ex parte request to Dismiss the Petition with Prejudice is granted.

Real Party in Interest 4165 Mississippi LLC's Motion for Sanctions under Code of Civil Procedure section 128.7 is denied.

Linda B. Quinn

Date: 09/22/2008

MINUTE ORDER

Dept: C-74

Page: 1

Calendar No.: 8

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

at 5/09/2008 Time: 10:00:00 AM Dept: C-71
Judicial Officer Presiding: Judge Ronald S. Prager
Clerk: Martha Martinez-Brown

Clerk/Court Attendant: L. WILKE
RM:
Reporter: , Steven Kosmata

Case Init. Date: 11/27/2006

Case No: GIC876017

Case Title: CITIZENS FOR RESPONSIBLE EQUITABLE
ENVIRONMENTAL DEVELOPMENT AND AFFORDABLE

Case Category: Civil - Unlimited

Case Type: Toxic Tort/Environmental

Event Type: Motion Hearing (Civil)

Appearances:

SEE ATTACHED SIGN-IN SHEET FOR APPEARANCES.

The Court hears oral argument and modifies the tentative ruling as follows: Ruling

The Court modifies the original ruling after oral argument after the Ex Parte Hearing on May 22, 2008.

RULING: The Court rules on the first issue bifurcated for trial as follows:

On a preliminary matter, the requests for judicial notice are granted.

Petitioners/Plaintiffs Citizens for Responsible Equitable Environmental Development and Affordable Housing Coalition of San Diego County ("Petitioners") bring this motion pursuant to Code of Civil Procedure section 1094.5 and challenge Respondent/Defendant City of San Diego's ("Respondent") alleged failure to follow the Subdivision Map Act ("SMA") and the San Diego Municipal Code ("SDMC") to hold hearings on Petitioners' timely administrative appeals.

The question to be answered is the following: Did Respondent unlawfully fail to hold administrative appeal hearings on the projects challenged in this proceeding?

A. Government Code section 66452.5 subd. (d) states, in relevant part, that "[a]ny interested person adversely affected by a decision of the advisory agency...may file an appeal with the governing body...within 10 days after the action of the advisory agency which is the subject of the appeal. The governing Commission is the advisory agency in this case. (Petitioners' Request for Judicial Notice (RJN"), Exh. A.) The City Council is the governing body. (Id. at Exhs. B, C.)

SDMC. Section 112.0508 of the SDMC also requires Respondent to provide Petitioners, who are "interested persons," with appeal hearings before the City Council. (Id. at Exhs. B, E.)

Date: 05/09/2008

MINUTE ORDER

Page: 1

Dept: C-71

Calendar No.: 13

The evidence establishes that Petitioners requested an appeal hearing on the non-CEQA issues, that they were timely, or that their requests were denied. Instead, Respondent asserted two procedural objections: (1) Petitioners did not set forth adequate facts regarding non-CEQA grounds in their appeal objections and (2) Petitioners have not shown that all affected parties are before this Court.

As to Respondent's first argument, the Court notes that Petitioners checked four of the five boxes identifying the reasons for the appeal on every appeal form and explicitly identified non-environmental reasons for their appeals in an opposition letter by Cory J. Briggs, which was referenced in the appeal applications.

As to Respondent's second argument, all but one of the remaining RPI's has been defaulted or is being dismissed. The one remaining RPI, Southern Seven, filed a notice of non-opposition to this motion.

Based on the foregoing, the answer to the question is yes. Therefore, the challenged projects shall be validated and remanded to the City Council to hold hearings on these non-CEQA issues.

IT IS SO ORDERED.

Attorney Briggs states he will dismiss without prejudice the case regarding real property located at 341 Illinois Street with the stipulation that the City will not issue any final maps on the other properties pending further order of the court. Attorney Briggs will dismiss all CEQA claims without prejudice.

Request for issuance of writ is granted.

Attorney Briggs to give notice and prepare judgement.

F I L E D

Clerk of the Superior Court

MAY 15 2008

By: K SANDOVAL, Deputy

ORIGINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO--CENTRAL DISTRICT (HALL OF JUSTICE)

Citizens for Responsible Equitable Environmental
Development and Affordable Housing Coalition
of San Diego County,

Petitioners and Plaintiffs,

vs.

of San Diego and DOES 1 through 100,

Respondents and Defendants;

4330 43rd LLC *et al.*,

Real Parties in Interest.

CASE NO. GIC876017

~~[Proposed]~~

**JUDGMENT ON PETITION FOR WRIT
OF MANDATE**

Action Filed: November 27, 2006

Department: 71 (Prager)

This proceeding came on regularly for trial on May 9, 2008, at 10:00 a.m. in Department 71 of the San Diego County Superior Court (Hall of Justice), with the Honorable Ronald S. Prager sitting without a jury. Petitioners and Plaintiffs Citizens for Responsible Equitable Environmental Development and Affordable Housing Coalition of San Diego County appeared by and through attorneys Cory J. Briggs and Mekaela M. Gladden of Briggs Law Corporation. Respondent and Defendant City of San Diego appeared by and through attorney Malinda R. Dickenson of the Office of the City Attorney of the City of San Diego. Real Party in Interest Southern Seven, LLC, appeared by and through attorney Anthony W. Silvia of Radford & Edwards. There were no other appearances.

At the trial, the Court confirmed that its tentative decision would be the final Statement of Decision in this proceeding. Petitioners and Plaintiffs thereafter dismissed their cause of action under the California Environmental Quality Act without prejudice, leaving their causes of action under the Subdivision Map Act and the San Diego Municipal Code.

Based on the Statement of Decision, which is now incorporated into this Judgment on Petition for Writ of Mandate by reference, and further based on the Court's other rulings at the trial, **IT IS ORDERED, ADJUDGED, AND DECREED** that:

1. A peremptory writ of mandate shall issue to command Respondent and Defendant City of San Diego and all Real Parties in Interest as follows:

A. The tentative map and all other approvals given (including but not limited to findings made and resolutions adopted) by Respondent and Defendant for each of the following condominium-conversion projects are now declared to be invalid: (i) project no. 81829, commonly known as 319 West Hawthorn Street; (ii) project no. 93544, commonly known as 909-919 Diamond Street; and (iii) project no. 89197, commonly known as 4024 Georgia Street. Without affecting this declaration of invalidity in any way, Respondent and Defendant shall rescind the tentative map and all other approvals given (including but not limited to findings made and resolutions adopted) by Respondent and Defendant for each of the foregoing condominium-conversion projects.

B. Not more than 60 calendar days after service of notice of entry of this judgment, Respondent and Defendant shall be notified in writing by any Real Party in Interest who intends to proceed with its condominium-conversion project, with the Real Party in Interest to serve a copy of the notification on Petitioners by first-class mail. Respondent and Defendant shall forever deem the Real Party in Interest's application for a tentative map and other approvals to have been abandoned by the Real Party in Interest and denied by Respondent and Defendant if the foregoing written notification is not received by Respondent and Defendant within the prescribed 60-day period.

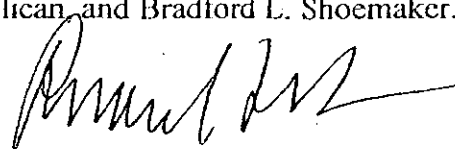
C. If a Real Party in Interest provides written notification of its intent to proceed with its condominium-conversion project to Respondent and Defendant within the 60-day period prescribed in Paragraph 1-B above, Respondent and Defendant shall conduct a hearing before the City Council on the appeal of the project filed by Petitioners and Plaintiffs prior to the commencement of this proceeding. Respondent and Defendant shall conduct the appeal hearing not more than 180 days after receiving written notification of the Real Party in Interest's intent to proceed with its project. The appeal hearing shall be noticed and conducted in accordance with all applicable laws.

D. For each of the condominium-conversion projects identified in Paragraph 1-A above, and except as expressly authorized by Paragraph 1-C above, Respondent and Defendant shall suspend any and all activities that result or could result in the issuance of a final map on the project under the Subdivision Map Act or the San Diego Municipal Code until the Court determines that Respondent has complied with the Subdivision Map Act and the San Diego Municipal Code.

2. If successful upon bringing a motion for attorney fees, Petitioners and Plaintiffs Citizens for Responsible Equitable Environmental Development and Affordable Housing Coalition of San Diego County shall recover their attorney fees incurred in connection with this proceeding in the amount of \$ _____, jointly and severally, from Respondent and Defendant City of San Diego and Real Parties in Interest Southern Seven, LLC, 1805 Columbia St., LLC, Bruce McKillican, and Bradford L. Shoemaker.

3. Petitioners and Plaintiffs Citizens for Responsible Equitable Environmental Development and Affordable Housing Coalition of San Diego County shall recover their costs incurred in connection with this proceeding in the amount of \$ _____, jointly and severally, from Respondent and Defendant City of San Diego and Real Parties in Interest Southern Seven, LLC, 1805 Columbia St., LLC, Bruce McKillican, and Bradford L. Shoemaker.

Date: MAY 15 2008, 2008.



Judge of the Superior Court

RONALD S. PRAGER

BRIGGS LAW CORPORATION [FILE: 1007.14]
Cory J. Briggs (State Bar no. 176284)
Makaela M. Gladden (State Bar no. 253673)
East "C" Street, Suite 111
Upland, CA 91786
Telephone: 909-949-7115

Attorney for Petitioners and Plaintiffs Citizens for
Responsible Equitable Environmental Development,
Affordable Housing Coalition of San Diego County,
and Aida Reyes

 **ORIGINAL**

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO--CENTRAL DISTRICT (HALL OF JUSTICE)

CITIZENS FOR RESPONSIBLE EQUITABLE
ENVIRONMENTAL DEVELOPMENT *et al.*,

Petitioners and Plaintiffs,

vs.

CITY OF SAN DIEGO *et al.*,

Respondents and Defendants;

EQR-DEERWOOD VISTAS, INC., *et al.*,

Real Parties in Interest and
Defendants.

CASE NO. 37-2008-00078171-CU-TT-CTL

**STIPULATION AND ORDER UNDER
CODE OF CIVIL PROCEDURE
SECTION 664.6**

Action Filed: February 19, 2008
Department: 72 (Anello)

Trial Date: None
Trial Time: None

Petitioners and Plaintiffs CITIZENS FOR RESPONSIBLE EQUITABLE ENVIRONMENTAL DEVELOPMENT and AFFORDABLE HOUSING COALITION OF SAN DIEGO COUNTY, on the one hand, and Real Parties in Interest YET MOY WONG and BING LEONG, on the other hand, now stipulate as follows by and through their respective attorneys of record:

I. WHEREAS the parties to this stipulation have entered into that certain Confidential Settlement and Release Agreement dated on or about May 24 and 28, 2008 ("Agreement"), which requires Petitioners and Plaintiffs to dismiss this entire action with prejudice once certain conditions are met;

2. WHEREAS the Agreement also requires the parties to perform obligations that may not fully performed prior to the dismissal of this action;

3. WHEREAS the parties desire for this Court to retain jurisdiction over them in order to enforce the Agreement until all obligations have been fully performed as set forth in Paragraph 7.17 of the Agreement; and

4. WHEREAS the parties agree that this Court's jurisdiction over them shall automatically terminate as soon as all their obligations under the Agreement have been fully performed as set forth in Paragraph 7.17 of the Agreement;

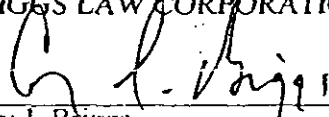
IT IS NOW REQUESTED that the Court retain jurisdiction over the parties in order to enforce the Agreement until all its obligations have been fully performed.

Date: May __, 2008.

Respectfully submitted,

BRIGGS LAW CORPORATION

By:

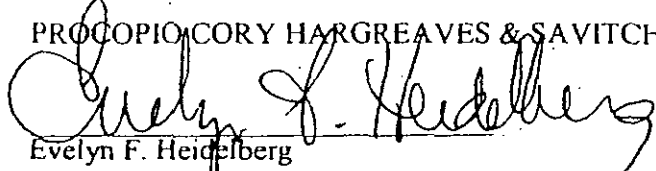

Cory J. Briggs

Attorney for Plaintiffs and Petitioners Citizens for Responsible Equitable Environmental Development and Affordable Housing Coalition of San Diego County

Date: May 30, 2008.

PROCOPIO CORY HARGREAVES & SAVITCH

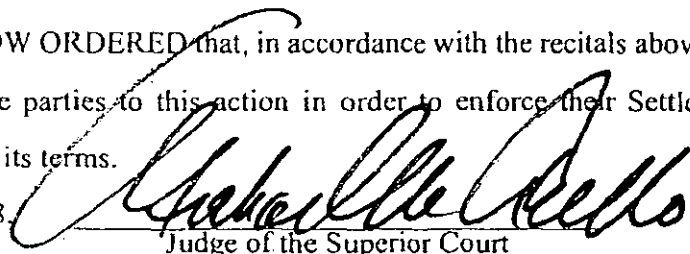
By:


Evelyn F. Heidelberg

Attorneys for Real Parties in Interest Yet Moy Wong and Bing Leong

FOR GOOD CAUSE, IT IS NOW ORDERED that, in accordance with the recitals above, the Court shall retain jurisdiction over the parties to this action in order to enforce their Settlement Agreement until performance in full of its terms.

Date: 6-6, 2008.


Judge of the Superior Court

BRIGGS LAW CORPORATION [FILE: 1007.14]
Cory J. Briggs (State Bar no. 176284)
Mekaela M. Gladden (State Bar no. 253673)
East "C" Street, Suite 111
Escondido, CA 91786
Telephone: 909-949-7115

Attorney for Petitioners and Plaintiffs Citizens for
Responsible Equitable Environmental Development,
Affordable Housing Coalition of San Diego County,
and Aida Reyes

 ORIGINAL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO--CENTRAL DISTRICT (HALL OF JUSTICE)

CITIZENS FOR RESPONSIBLE EQUITABLE
ENVIRONMENTAL DEVELOPMENT *et al.*,

Petitioners and Plaintiffs,

vs.

CITY OF SAN DIEGO *et al.*,

Respondents and Defendants;

EQR-DEERWOOD VISTAS, INC., *et al.*,

Real Parties in Interest and
Defendants.

CASE NO. 37-2008-00078171-CU-TT-CTL

**STIPULATION AND ORDER UNDER
CODE OF CIVIL PROCEDURE
SECTION 664.6**

Action Filed: February 19, 2008
Department: 72 (Anello)

Trial Date: None
Trial Time: None

Petitioners and Plaintiffs CITIZENS FOR RESPONSIBLE EQUITABLE ENVIRONMENTAL DEVELOPMENT and AFFORDABLE HOUSING COALITION OF SAN DIEGO COUNTY, on the one hand, and Real Party in Interest CHARLES W. WARNER, on the other hand, now stipulate as follows by and through their respective attorneys of record:

1. WHEREAS the parties to this stipulation have entered into that certain Confidential Settlement and Release Agreement dated on or about May 28 and 29, 2008 ("Agreement"), which requires Petitioners and Plaintiffs to dismiss this entire action with prejudice once certain conditions are met;

2. WHEREAS the Agreement also requires the parties to perform obligations that may not fully performed prior to the dismissal of this action;

3. WHEREAS the parties desire for this Court to retain jurisdiction over them in order to enforce the Agreement until all obligations have been fully performed as set forth in Paragraph 7.17 of the Agreement; and

4. WHEREAS the parties agree that this Court's jurisdiction over them shall automatically terminate as soon as all their obligations under the Agreement have been fully performed as set forth in Paragraph 7.17 of the Agreement;

IT IS NOW REQUESTED that the Court retain jurisdiction over the parties in order to enforce the Agreement until all its obligations have been fully performed.

Date: June 2, 2008.

Respectfully submitted,

BRIGGS LAW CORPORATION

By:

Cory J. Briggs

Attorney for Plaintiffs and Petitioners Citizens for Responsible Equitable Environmental Development and Affordable Housing Coalition of San Diego County

Date: June 2, 2008.

PROCOPIO CORY HARGREAVES & SAVITCH

By:

Evelyn F. Heidelberg

Attorneys for Real Party in Interest Charles E. Warner

FOR GOOD CAUSE, IT IS NOW ORDERED that, in accordance with the recitals above, the Court shall retain jurisdiction over the parties to this action in order to enforce their Settlement Agreement until performance in full of its terms.

Date: 6-6, 2008.

Judge of the Superior Court

Richard Schulman

From: Cory Briggs [cory@briggslawcorp.com]
Sent: Friday, December 12, 2008 2:30 PM
To: Richard Schulman
Subject: RE: CREED v. City of San Diego (V)

Richard:

I met with my clients today. Your clients' offer is respectfully rejected. However, my clients propose the following counter-offer: (1) all projects in the lawsuit for your clients provide 10% on-site affordable housing; (2) your clients pay \$600,000.00 to the San Diego Community Land Foundation (my clients do not care how that is allocated among your clients); (3) my clients will dismiss their claims against your clients with prejudice; (4) each party bears its own legal fees (technically, my clients would be reserving their rights to go after the city and others but would not come after your clients); and (5) we execute the usual mutual general releases etc. This offer expires at the close of business on December 19, 2008.

Thanks.

Cory

Cory J. Briggs
Briggs Law Corporation
San Diego County: 5663 Balboa Avenue, No. 376, San Diego, CA 92111-2705
Inland Empire: 99 East "C" Street, Suite 111, Upland, CA 91786
Telephone: 858-495-9082 (San Diego), 909-949-7115 (Inland Empire)
Facsimile: 858-495-9138 (San Diego), 909-949-7121 (Inland Empire)
E-mail: cory@briggslawcorp.com

Important Notice: This message contains confidential information intended only for the use of the addressee(s) named above and may contain information that is legally privileged. If you are not an addressee or the person responsible for delivering this message to the addressee(s), you are hereby notified that reading, disseminating, distributing, or copying this message is strictly prohibited. If you have received this message by mistake, please immediately notify me by replying to this message and then delete the original message and your reply immediately thereafter. Thank you very much.

Internal Revenue Service Circular 230 Disclosure: Nothing in this message is intended or written by Briggs Law Corporation (including its attorneys and staff) to be used and cannot be used for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed in this message.

From: Richard Schulman [mailto:rschulman@hsrqb.com]
Sent: Wednesday, December 10, 2008 10:54 AM
To: Cory Briggs
Subject: RE: CREED v. City of San Diego (V)

Here are two settlement offers, subject to the usual settlement privileges.

Casoleil already agreed, voluntarily, to provide the on-site affordable you value. In exchange for a dismissal with prejudice of that project (and everyone associated with it), Casoleil will also pay \$5,000, which you and your clients can allocate as you wish between your fees and a City study.

1/5/2009

The two Costa Verde projects are, I believe, grandfathered from on-site inclusionary because their applications were deemed complete before that requirement was created. The Council imposed that condition on the projects anyway. We are about to file suit against the City to have that condition removed. I've already drafted the petition and my client has already signed a verification. In exchange for the dismissal with prejudice of those projects (and everyone associated with them), Garden Communities (or some other entity; I don't do entity work) will accept the on-site inclusionary and pay \$4,000. Again, the allocation of that sum would be up to you and your clients.

All three of these are luxury projects, so I don't think they would have the socioeconomic impacts you're concerned about. (Avoiding for now any dispute about the general validity of anyone's theories.) To the extent you want the money to go toward a City study, we're open to suggestion about structuring an escrow or whatever; my clients just want to pay and be able to move forward. Part of moving forward means we would also ask for a covenant not to sue further, over and above the dismissal.

By the way, I'm not sure what your concern was about in your e-mail about a per-unit amount. I asked about it at the meeting, but I thought your answer was pretty clear so I didn't mention it again and it isn't in this offer.

I look forward to hearing from you.

From: Cory Briggs [mailto:cory@briggslawcorp.com]

Sent: Wednesday, December 10, 2008 6:52 AM

To: Richard Schulman

Subject: CREED v. City of San Diego (V)

Richard:

I received your voice mail yesterday. To avoid further miscommunication, I think it's best if you put your clients' settlement proposal in writing (if they have one). And if you have questions about my clients' position at this point, then it'd be best if you put them in writing.

Thanks.

Cory

Cory J. Briggs

Briggs Law Corporation

San Diego: 5663 Balboa Avenue, No. 376, San Diego, CA 92111-2705

Inland Empire: 99 East "C" Street, Suite 111, Upland, CA 91786

E-mail: cory@briggslawcorp.com

Telephone: 858-495-9082 (San Diego), 909-949-7115 (Inland Empire)

Facsimile: 858-495-9138 (San Diego), 909-949-7121 (Inland Empire)

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1/5/2009

California Business Portal

Secretary of State DEBRA BOWEN

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Corporation		
SAN DIEGO COMMUNITY LAND FOUNDATION		
Number: C3065384	Date Filed: 10/5/2007	Status: active
Jurisdiction: California		
Address		
99 EAST C ST STE 111		
UPLAND, CA 91786		
Agent for Service of Process		
CORY J BRIGGS		
99 EAST C ST STE 111		
UPLAND, CA 91786		

Blank fields indicate the information is not contained in the computer file.

If the status of the corporation is "Surrender", the agent for service of process is automatically revoked. Please refer to California Corporations Code Section 2114 for information relating to service upon corporations that have surrendered.

California Business Portal

Secretary of State DEBRA BOWEN

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Corporation		
CITIZENS FOR RESPONSIBLE EQUITABLE ENVIRONMENTAL DEVELOPMENT		
Number: C2293461	Date Filed: 1/7/2003	Status: active
Jurisdiction: California		
Address		
99 EAST 'C' STREET, SUITE 111		
UPLAND, CA 91786		
Agent for Service of Process		
CORY J. BRIGGS		
99 EAST 'C' STREET, SUITE 111		
UPLAND, CA 91786		

Blank fields indicate the information is not contained in the computer file.

If the status of the corporation is "Surrender", the agent for service of process is automatically revoked. Please refer to California Corporations Code Section 2114 for information relating to service upon corporations that have surrendered.

000541



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: June 6, 2007 REPORT NO. 07-101

ATTENTION: Honorable Council President and City Council
Docket of June 12, 2007

SUBJECT: APPEAL OF ENVIRONMENTAL DETERMINATION FOR TWO
TENTATIVE MAPS FOR CONDOMINIUM CONVERSIONS
(ATTACHMENT 1)
Council Districts 1 and 6

OWNERS: Multiple – Reference Attachment 1

APPELLANT: Citizens for Responsible Equitable Environmental Development,
c/o Cory J. Briggs, Briggs Law Corporation

SUMMARY

Issues - Should the City Council AFFIRM staff's environmental determination of exemption prepared for the two tentative maps for condominium conversions listed in Attachment 1?

Staff Recommendations – 1. Deny the appeals and uphold the Environmental Determination for each of the subject projects. 2. Make an express finding that the information provided by the appellant and his experts should be excluded from the record because it is argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

Environmental Review – The City of San Diego as Lead Agency under the California Environmental Quality Act (CEQA) has determined that the subject projects are exempt pursuant to State CEQA Guidelines Section 15301(k).

Fiscal Impact Statement: Due to the two appeals for this general single issue, staff has consolidated the format in this one appeal request. The processing of these appeals and for each individual project to a decision is being charged to a deposit account established by the applicant. Should the City Council remand the matter back to the Development Services Department or direct a Program Environmental Impact Report be prepared, significant unreimbursed costs could be incurred.

Code Enforcement Impact – None with this action.

Housing Impact Statement – No impact with this action. With the proposed conversion of existing apartments to condominiums, there would be a loss and gain of an equal number of rental units and for-sale units. These projects are subject to all current regulations regarding inclusionary housing and tenant relocation assistance.

BACKGROUND

Note that this is a batch of condominium conversion appeals similar to the batch of 76 such appeals heard and denied by the City Council on July 31, 2006, as well as the batch of 18 such appeals heard and denied by the City Council on March 20, 2007. Accordingly, the Executive Summary, Staff Report, and Attachments are nearly identical to those already provided in the prior hearing.

The subject projects are Tentative Maps to convert existing residential units to condominiums. Although each project listed in Attachment I has separate ownerships and characteristics, the appeals by Briggs Law Corporation are the same for each and the reasons for the appeals are more global in nature and not specific to each project. In the interest of efficiency and productivity, this one Report is being issued which encompasses each individual project.

Staff conducted the initial reviews of the proposed Tentative Maps in accordance with the process set forth in Sections 15060 and 15061 of the California Environmental Quality Act (CEQA) Guidelines, and using the City's CEQA Significance Thresholds. Several issues were considered during the reviews, including traffic, parking, and visual quality. Physical impacts related to the loss of affordable housing was also raised as a question to be considered by the department in the evaluation of all of the discretionary condominium conversions.

To date, no substantial evidence has been identified by or presented to staff that would support a fair argument that these particular condominium conversions could result in significant physical impacts on the environment, either singly or cumulatively. Staff therefore determined that the projects would not result in a direct or reasonably foreseeable indirect physical change in the environment. City staff have determined that the projects are exempt from CEQA pursuant to State CEQA Guidelines Section 15301(k), and these determinations were appealed to the City Council by Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation. The individual dates of environmental determinations and appeals are listed in the table in Attachment I.

While these Process 4 activities have not yet been to public hearings for the purpose of deciding whether to approve or deny the projects, these appeals are before the City Council because CEQA allows people to appeal categorical environmental exemption determinations to City Council (Section 21151(c) of the Statutes).

Pursuant to Section 21151(c) of the CEQA statutes, Mr. Cory Briggs filed the appeals of the City of San Diego staff's determinations of environmental exemption for the projects (Attachment 2). These appeals apply only to the environmental determination.

DELEGATION OF RESPONSIBILITIES

In keeping with Section 15025 of CEQA, Section 128.0103 of the City's Land Development Code assigns the responsibility for implementation of CEQA to the Development Services Department (DSD). The Environmental Analysis Section (EAS) of DSD evaluates all discretionary project proposals, including condominium conversions, to determine whether there is a potential for such actions to result in physical impacts on the environment. Anyone can submit information to EAS to assist in its evaluation; but by law, the evaluation must be impartial and independent of any outside influences.

BURDEN OF PROOF

The City has the burden of proving that condominium conversions fall into one of the classes of categorical exemptions. In this case, substantial evidence supports all of the elements of the Class I categorical exemption (15301), which states "Class I consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." Specifically, the subject projects meet the definition contained in Section 15301(k); that is, "Division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt." There is significant evidence (i.e., it is self-evident) that the subject condominium conversions are a division of existing multiple family residences into common-interest ownership.

The appellant has the burden to prove that the exemption has been inappropriately applied to the subject condominium conversion projects, as he has claimed in his appeals. As stated in *Practice under the California Environmental Quality Act* (Continuing Education of the Bar, Oakland, California), "When an agency finds that a proposed project is subject to a categorical exemption, it is not required to also determine that none of the exceptions applies. A determination that an activity is categorically exempt constitutes an implied finding that none of the exceptions to the exemptions exists." (Note: staff did consider the exceptions and found that none apply to these projects.)

"Once an agency determines that a project falls within one of the categorical exemptions, the burden shifts to the objecting party to produce substantial evidence showing that the project has

the potential to have a significant adverse environmental impact that will trigger an exception." Vague and unsubstantiated expert opinion and public controversy were not sufficient to trigger application of an exception.

DISCUSSION

The Fair Argument standard requires substantial evidence that impacts *will* occur; the threshold is low relative to whether those impacts *may* be significant. The evidence submitted by the appellant suggests that impacts *may* occur, not that they *will* occur or that they may be significant. If there is no evidence that the impacts *will* occur, then it cannot be concluded that they may be significant. Noticeably absent from the entirety of the appellant's presentation is any comparison of the appellant's evidence to the City's thresholds of significance.

On the appeal forms for each project, the appellant states that "The project does not qualify for exemption under the CEQA Guidelines. Furthermore, the project does not qualify for exemption under the CEQA Guidelines based on exceptions to exemption arising from the cumulative and other potentially significant adverse environmental impacts of converting apartments to condominiums, especially in light of the numerous proposed conversions and the serious decline in affordable housing that the City of San Diego is facing." Staff response follows:

The California Secretary of Resources has determined that 33 categories of activities (Sections 15301 through 15333 of the State CEQA Guidelines) are generally exempt from CEQA because these activities do not have the potential to result in physical impacts. However, if there is a reasonable possibility that the activity will have a significant environmental effect due to unusual circumstances, or that there will be a significant cumulative impact from successive projects of the same type in the same place over time, the categorical exemptions may not be used (Section 15300.2).

One of the Class I CEQA categorical exemptions is Section 15301(k), "Division of existing multiple family or single-family residences into common-interest ownership and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt." The exemption specified in Section 15301(k) is used by EAS staff for condominium conversions of existing structures or proposed structures that have been permitted but not yet built, as long as there is no expansion of existing use and there are no physical changes involved that would not otherwise be exempt, and when the project would not contribute considerably to a significant cumulative impact.

The California Public Resources Code requires staff to base its determination that a project will have a significant environmental impact on substantial evidence (Section 21082.2). As defined in Section 15384(b) of the CEQA Guidelines, "Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." Section 15384(a) states: "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence." According to Section 15360 of the Guidelines, "Environment" means the

physical conditions which exist within the area which will be affected by the proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance. The area involved shall be the area in which significant effects would occur either directly or indirectly as a result of the project. The "environment" includes both natural and man-made conditions."

CEQA focuses on physical impacts on the environment. Where social and economic impacts are discussed, CEQA requires that those impacts be related to significant physical impacts on the environment. Even where evidence establishes the possibility of adverse social impacts, if there is no significant change in the environment, the exemption is still appropriate.

At the environmental determination appeal hearing of June 13, 2006 (for the Carroll Canyon Tentative Map project), the appellant presented a power point slide show and submitted an undated and unsigned "Study of Residents in Large Condominium Conversions in District Three," (Chief Investigator: J Gregg Robinson, Ph.D.) in support of his claim that condominium conversions result in physical environmental impacts. The power point presentation and Dr. Robinson's study, along with staff's responses, are included as Attachments 6 and 7. In these documents, the appellant is asking the Council to make a reasonable inference that there is a fair argument that condominium conversions have physical and growth inducing impacts. CEQA requires that such an inference be supported by facts. The appellant and his experts have provided some survey data regarding apartment renters' car ownership status, miles traveled to work, and use of public transportation. No comparative data was provided on condominium residents' (owners/renters) car ownership status, miles traveled to work, or use of public transportation. It is not possible to reach any reasonable balanced conclusion using only one-sided data. Therefore, staff requests that the Council find that this study is inaccurate or erroneous because it did not offer complete data and it should be excluded from the record. If excluded from the record, the appellant's argument is not substantiated with relevant facts and it does not support a fair argument that condo conversions result in environmental impacts.

The appellant and his experts also argue that "CEQA requires environmental review whenever the project may conflict with any applicable land-use plan, policy or regulation of the city (including but not limited to the city's general plan) adopted for the purpose of avoiding or mitigating an environmental effect." This statement is used as the authority for the statement that condominium conversions may conflict with the goal of affordable housing by making it harder to increase housing densities due to multiple owners. However, the appellant and his experts offer no evidence that the subject projects would in fact conflict with the applicable land use policy. There is no evidence that the City's density goals could not be met through the development of other high density structures, or that existing condominiums would not add units through adding additional floors and/or underground parking. In identifying land use impacts, staff uses significance thresholds. According to the City's Significance Determination Thresholds, a conflict with a land use plan is not in and of itself a significant impact - the conflict must result in a significant physical impact. No evidence of significant physical impacts on the environment has been identified by staff or presented by the appellant and his experts. Therefore, the appellant's and his experts' arguments do not have an adequate factual basis and are clearly erroneous and should be excluded from the record.

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Staff acknowledges that there is not sufficient affordable housing in San Diego. After evaluation of these projects and consideration of the City Attorney's memorandum of November 10, 2005, regarding condominium conversions, staff found no substantial evidence of a connection between any socio-economic effects resulting from condominium conversions and any physical impact on the environment that would be considered significant. Therefore, for the reasons discussed above, it is staff's professional opinion that the subject projects qualify for Class 15301(k) categorical exemptions as specified in CEQA.

Please note also that several other large jurisdictions within California, including San Diego County, the City of Santa Barbara, and Los Angeles also apply CEQA exemptions to condominium conversions. Staff is not aware of any city in California that does not use the categorical exemption for condominium conversions. Apart from CEQA, several jurisdictions also have enacted ordinances to regulate condominium conversions.

Prior City Council Action:

It should be noted that these same types of appeals were scheduled before the City Council on July 31, 2006. On that date, there were 76 appeals scheduled; the City Council concurred with staff and denied all 76 of the appellant's appeals. Similarly, there were 18 similar appeals heard by the City Council on March 20, 2007. Again, the City Council concurred with staff and denied all 18 of the appellant's appeals.

CONCLUSION

Staff agrees that limited availability of affordable housing in the City of San Diego is an issue of concern. However, the concerns with condominium conversions are policy issues within the purview of City Council. Revisions to appropriate policies and regulations are a better and more direct way to address the concerns raised by the Land Use and Housing Committee about condominium conversions. On January 24, 2006 and on June 13, 2006, the City Council unanimously approved significant revisions to the condominium conversion regulations.

While staff did evaluate the potential for physical impacts related to condominium conversions, it should be noted that the burden of proving that a categorical exemption has been inappropriately applied is on the appellant. The appellant has not proved his argument.

Overall, staff believes the information provided by the appellant is speculative. It does not contain relevant or complete quantitative and qualitative facts that could lead to any reasonable conclusion that condominium conversions result in significant physical impacts to the environment. The appellant's experts' opinions regarding physical environmental impacts are not supported by facts, as required in Section 21082.2(c) of the CEQA Statutes.

The City Attorney has opined that a Program Environmental Impact Report (PEIR) should be prepared to address the cumulative impacts of condominium conversions. However, there is no condominium conversion "program" to analyze, and no discretionary action to trigger a PEIR. Staff believes that such a document would likely be challenged in court based on the speculative nature of the unsubstantiated opinions provided regarding cumulative and growth inducing

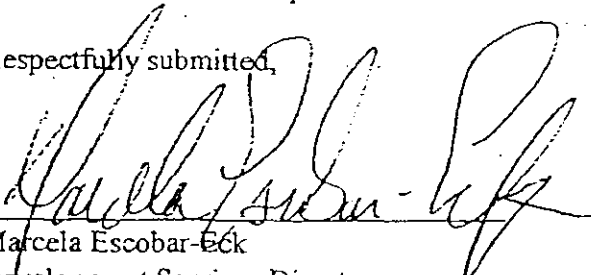
impacts. In addition, CEQA states that lead agencies may not require EIRs for those projects described in the exemption categories unless the exceptions listed in Section 15300.2 are found to apply (Section 15300.4). Staff also notes that a PEIR would probably take approximately eighteen months to complete, and no funding source is currently available.

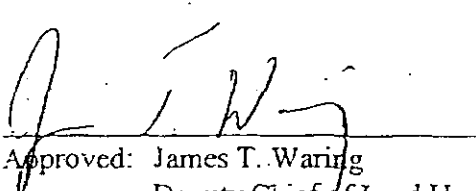
The subject projects do not include any physical changes in the environment that would not otherwise be exempt, or any intensification of use. The appellant and his experts have not produced any substantial evidence supporting a fair argument that growth inducement or significant cumulative physical impacts would result. Staff therefore recommends that Council deny the appeals and affirm staff's determination of environmental exemptions for the projects listed in Attachment 1 pursuant to Section 15301(k) of the State CEQA Guidelines. Staff also recommends that Council make an express finding that the information provided by the appellant and his experts in support of his claim that condominium conversions result in physical environmental effects should be excluded from the record because it is argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

ALTERNATIVES

1. Grant the appeals, set aside the environmental determinations, and remand the matter to the Development Services Director for reconsideration, with direction or instruction the City Council deems appropriate.
2. Grant the appeals and direct staff to prepare a Program Environmental Impact Report to assess the physical effects of condominium conversions. If Council chooses this alternative, staff respectfully requests direction from Council regarding the existence of substantial evidence, as required by Section 21082.2 of the California Public Resources Code, supporting a fair argument that condominium conversions result in significant environmental effects. Should this alternative be chosen, staff estimates the fiscal impact to be one full-time equivalent senior planner to complete the PEIR.

Respectfully submitted,


Marcela Escobar-Eck
Development Services Director


Approved: James T. Waring
Deputy Chief of Land Use and
Economic Development

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Attachments:

1. List of specific projects which have been appealed by Briggs Law Corp./Individual Ownerships
2. Full Copy of Appeals
3. Determination of Environmental Exemption Forms
4. Memo from City Attorney's Office, dated 11/10/05
5. Memo from Robert Manis, Assistant Deputy Director, dated 11/17/05
6. Appellant's power point presentation/staff's responses
7. Dr. Robinson's study/staff's responses

000578

CITY OF SAN DIEGO
MEMORANDUM

DATE: November 17, 2005

TO: Planning Commission

FROM: Robert Manis, Assistant Deputy Director
Land Development Review Division
Development Services Department

SUBJECT: Condominium Conversions- California Environmental Quality Act
(CEQA) Compliance

At the November 10, 2005, Planning Commission hearing, the Planning Commissioners were given copies of a memorandum (dated November 10, 2005) from the City Attorney's office. The subject of this memorandum is condominium conversions and compliance with the California Environmental Quality Act (CEQA). The Planning Commission briefly discussed the memo, continued the remaining condominium conversions on the agenda for that day, and asked the Development Services Department to return on November 17, 2005 to address the issues raised in the City Attorney's memorandum. This memorandum contains a summary of the Development Services Department's interpretation of CEQA as it applies to condominium conversions.

Section 128.0103 of the City's Land Development Code assigns the responsibility for CEQA determinations and analysis to the Development Services Department (DSD). The Environmental Analysis Section (EAS) of DSD evaluates all discretionary project proposals, including condominium conversions, to determine whether there is a potential for such actions to result in physical impacts on the environment. Anyone can submit information to EAS to assist in its evaluation; but by law, the evaluation must be impartial and independent of any outside influences.

The City Attorney's memorandum contends that DSD is not applying CEQA to condominium conversions properly. It also states that condominium conversions result in social and economic effects and that these effects are the indirect cause of physical environmental impacts. For this reason, the memorandum concludes that condominium conversions should be subject to full environmental analysis and not be categorically exempted from CEQA.

DSD disagrees that CEQA is not being applied properly and that condominium conversions cannot qualify for a categorical exemption. The California State Legislature

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Planning Commission
November 17, 2005

has determined that 33 categories of activities (Sections 15301 through 15333 of the State CEQA Guidelines) are generally exempt from CEQA because these activities do not have the potential to result in physical impacts. However, if there is a reasonable possibility that the activity will have a significant environmental effect due to unusual circumstances, or that there will be a significant cumulative impact from successive projects of the same type in the same place over time, the categorical exemptions may not be used (Section 15300.2).

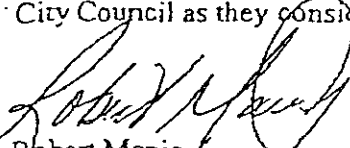
One of the Class I CEQA categorical exemptions is Section 15301(k), "Division of existing *multiple family or single-family residences into common-interest ownership* and subdivision of existing commercial or industrial buildings, where no physical changes occur which are not otherwise exempt". The exemption specified in Section 15301(k) is used by EAS staff for condominium conversions of existing structures or proposed structures that have been permitted but not yet built, as long as there is no expansion of existing use and there are no physical changes involved that would not otherwise be exempt, and when the project would not contribute considerably to a cumulative impact. Condominium conversions that are exempted do not include any change or intensification of use, do not constitute a loss of housing, and will not result in any physical impacts on the environment.

CEQA focuses on physical impacts to the environment. Where social and economic effects are discussed, CEQA requires that those effects be related to physical impacts on the environment. Staff does not agree with the City Attorney's determination that social and economic effects from condominium conversions result in physical impacts on the environment. DSD does acknowledge that there could be some social and economic issues associated with condominium conversions; however, there has been no evidence provided (as required by Section 15131 and 15384 of the CEQA Guidelines) that there is a chain of cause and effect between condominium conversions and any physical impact on the environment.

The California Public Resources Code requires staff to base its determination that a project will have a significant environmental impact on substantial evidence (Section 21082.2). As defined in Section 15384(b) of the CEQA Guidelines, "Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts." Section 15384(a) states: "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence." No substantial evidence has been provided to DSD that would indicate that condominium conversions, individually or cumulatively, result in any physical impact to the environment.

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Planning Commission
November 17, 2005

DSD agrees that there are a number of issues associated with condominium conversions. There are existing policies and regulations that address some of these issues. Several revisions and additions to the condominium conversion regulations are presently being drafted at the direction of Council's Land Use and Housing Committee. The concerns raised in the City Attorney's memorandum are policy issues that will be addressed by the City Council as they consider these regulatory revisions.



Robert Manis
Assistant Deputy Director

cc: Karen Heumann, Assistant City Attorney

APPEAL OF CITY OF SAN DIEGO EXEMPTION DETERMINATION
Item 356: 9404-9494 Carrizo Canyon Road (Project no. 90632)
13 June 2006

Appellant Citizens for Responsible
Equitable Environmental Development

Craig J. Briggs
Briggs Law Corporation
99 Elm "C" Street, Suite 111
Upland, CA 91786
Telephone: 909-919-7115
Facsimile: 909-919-7111

OVERVIEW OF TODAY'S PRESENTATION

- Response to Staff Report (3)
- Review of CEQA Requirements
- Discussion of Key Evidence of Environmental Impacts (7)
(Please see accompanying CD-ROM for all supporting evidence)

2

RESPONSE TO STAFF REPORT

RESPONSE TO STAFF REPORT

Claim 1: "The Environmental Analysis Section (EAS) of DSD evaluates all discretionary project proposals, including condominium conversions, to determine whether there is a potential for such actions to result in physical impacts on the environment. Anyone can submit information to EAS to assist in its evaluation; but by law, the evaluation must be impartial and independent of any outside influences." See p. 3, ¶ 1.

Response: This assertion is misleading at best. The public doesn't even know that a project application has been submitted until the Notice of Right to Appeal Environmental Determination is given, at which point it's too late. The public's only right to "assist in [EAS's] evaluation" is to pay \$100.00 per project and go through an appeal hearing.

Slide 4:

The statement that "the public doesn't even know that a project application has been submitted until the Notice of Right to Appeal Environmental is given, at which point it's too late" is not accurate. The public has three avenues for providing information to EAS staff. First, Sections 112.0301 and 112.0304 of the Municipal Code require the applicant to post a Notice of Application or Notice of Future Decision along the street frontage of the property that is the subject of the application. The Notice includes a City contact name and number. Second, the Notice of Right to Appeal the Environmental Determination is posted on the City's web site. The Notice also has a contact name and number. Anyone may call the contact listed to provide information regarding the potential significant environmental impacts of a project staff has determined is exempt from CEQA. If provided with substantial evidence of significant impact, staff has the ability to reject the exemption and prepare an appropriate environmental document. Third, in those cases where an environmental document is prepared, the Notice of Right to Appeal the Environmental Determination is not filed until final project approval. However, the public can participate in the entitlement process through commenting on the environmental document when it is out for public review and/or speaking at the project hearing and/or sending a letter to the decisionmaker prior to project approval.

RESPONSE TO STAFF REPORT

Claim 2: "Staff is not aware of any city in California that does not use the categorical exemption for condominium conversions." See p. 4, ¶ 2.

Response: This statement is also misleading. While the staff report at least points out that other jurisdictions regulate condo conversions, the claim suggests that other jurisdictions approve condo conversions under the exemption at a rate comparable to San Diego's. That is false.

For example, San Francisco limits condo conversions to 200 per year. The number of conversions allowed in Riverside and La Mesa are but a fraction of the number of apartments built in their jurisdictions in the preceding year. Santa Monica prohibits them altogether.

RESPONSE TO STAFF REPORT

Claim 3: "Staff is not aware of any substantial evidence that growth inducement or cumulative physical impacts would result [from condo conversions]." See p. 4, ¶ 4.

Response: "Substantial evidence" does not refer to the amount of evidence. It refers to the kind and quality of evidence, as today's staff report makes clear in the last paragraph on page 3. So, don't think that Appellant must provide you with "mountains of evidence" before CEQA review is triggered. One thing that the authors of today's staff report did get right is the recognition that there need only be a "fair argument" that is based on the right kind of evidence—namely, substantial evidence—before CEQA review is triggered. See p. 5, ¶ 3.

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Slide 5:

Staff does not agree that the statement is misleading. It was not intended to suggest that other jurisdictions approve condo conversions at a rate comparable to San Diego. In phoning other jurisdictions, staff asked the question "Are you experiencing a proliferation of condo conversions?" Several jurisdictions responded in the affirmative.

Slide 6:

Staff agrees that the quality of evidence is important in making a determination of fair argument. However, the appellant and his experts have not provided any substantiated evidence of significant physical impacts related to the subject projects.

RESPONSE TO STAFF REPORT

"Substantial evidence" as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence." See CEQA Guidelines § 15384(a).

Key Concepts: "relevant information," "reasonable inferences," and "fair argument." (N.B.: There is enough evidence to meet a higher standard.)

7

REVIEW OF CEQA-REQUIREMENTS

8

Slide 7:

The appellant is asking Council to make a reasonable inference that there is a fair argument that condominium conversions result in physical and growth inducing impacts. CEQA requires that such an inference be supported by relevant facts. No such relevant facts have been provided by the appellant.

00586

REVIEW OF CEQA REQUIREMENTS

Guidelines § 15061(b)(2): A project is exempt from CEQA if (i) it is exempt pursuant to a categorical exemption under Guidelines § 15000 and (ii) application of that categorical exemption is not barred by one of the exceptions set forth in § 15300.2.

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REVIEW OF CEQA REQUIREMENTS

Guidelines § 15010(k): CEQA does not apply to a project involving the "division of existing multiple family or single-family residences into common-interest ownership . . . where no physical changes occur which are not otherwise exempt."

However, this exemption is further qualified by the requirement that the project involve "negligible or no expansion of use beyond that existing at the time of the lead agency's determination." See Guidelines § 15301.

(N.B.: CREED/AHCSIX dispute the applicability of this exemption by its very terms, but for purposes of this appeal only (and without prejudice to challenging the exemption in court) will assume that it applies to condominium conversions.)

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Slide 10:

- The condominium conversions that are the subject of the appeals do not involve expansion of use. The existing use is residential, and the proposed use is residential.
- None of the projects propose any increase in units.

0587

REVIEW OF CEQA REQUIREMENTS

Guidelines 6.1500.2: This appeal is based on two exceptions to the exemption at issue:

"(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

"(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."

//

REVIEW OF CEQA REQUIREMENTS

Guidelines 6.1511: This section covers economic and social impacts:

"(a) Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.

"(h) Economic or social effects of a project may be used to determine the significance of physical changes by the project."

/2

Slide 12:

Lead Agencies have the discretion to include or exclude a discussion of social and economic changes. If included, social and economic changes must have a nexus to significant physical environmental impacts. No such nexus has been demonstrated by the appellant or his experts.

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REVIEW OF CEQA REQUIREMENTS

Guidelines § 15131 (cont): This section covers economic and social impacts:

"Discussion: *** Despite the implications of these sections, CEQA does not focus exclusively on physical changes, and it is not exclusively physical in concern. For example, in Section 21083(c), CEQA requires an agency to determine that a project may have a significant effect on the environment if it will cause substantial adverse effects on human beings, either directly or indirectly." [N.B.: The discussion also notes that that requirement was added in the same legislation that added the definition of "environment," adding further support to the notion that CEQA's concerns extend to harm to persons and not just to the environment.]

REVIEW OF CEQA REQUIREMENTS

Guidelines Appendix G, § XII: This section of the Initial Study Checklist asks whether a project has the potential to:

"(b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?"

"(c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?"

Slide 13:

Practice Under the California Environmental Quality Act, Q. Act by CIB (Sections 6.56 and 13.8) cites several court decisions that clarify that "significant effect on the environment" is limited to substantial, or potentially substantial, adverse changes in physical conditions within the area as defined in Section 21060.5 of the Statutes. In this section, "environment" is defined as "...the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance." To date, the appellant has not addressed any of the physical conditions mentioned in the CEQA definition of "environment."

Slide 14:

Condo conversions do not displace substantial numbers of existing housing. There is no evidence that condo conversions necessitate the construction of replacement housing elsewhere. There is no evidence that condo conversions would lead to approval of any new replacement housing projects. Section 15004 of the CEQA Guidelines addresses the appropriate timing for CEQA review. Any proposed new replacement housing would be subject to CEQA review. At this time, however, there are no such proposals before staff, and no proposals for replacement housing resulting from condo conversions have been submitted.

REVIEW OF CEQA REQUIREMENTS

General Rule for CEQA Exemptions:

"[W]here there is any reasonable possibility that a project or activity may have a significant effect on the environment, an exemption would be improper." *Wildlife Alliance v. Chickering*, 18 Cal. 3d 190 (1976).

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REVIEW OF CEQA REQUIREMENTS

How does the "fair argument" standard work?

"To better illustrate the two approaches, we provide the following example. Suppose that an agency is faced with two credible expert reports reaching different conclusions about whether a project will create a significant effect on the environment. The first approach (the traditional approach) would have the agency decide between the credible expert reports and make a finding, after weighing the reports, as to whether a project will cause a significant effect. The second approach (the fair argument approach) would have the agency take note of the fact that credible expert reports disagree, and without weighing the reports or making any further findings, conclude that there is necessarily a reasonable possibility of a significant effect, since at least one credible expert report reached that conclusion." *See Banker's Hill for Community Preservation Group v. City of San Diego*, 139 Cal. App. 4th 249 (2006).

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Slide 15: Staff agrees with this statement. However, the appellant would like the Council to believe that the evidence presented suggests that the subject projects may result in physical effects on the environment. Even if Council believes this to be so, the fair argument standard requires substantial evidence that they may result in significant impacts on the environment. The appellant and his experts have not referenced the City's significance determination thresholds at all, much less provided facts to demonstrate that the thresholds could in any way be exceeded by the effects of condominium conversions.

Slide 16:

The fair argument rule does not mean that the lead agency has no discretion concerning the evidence or the determination of significance. In fact, the agency must decide whether information relating to potential impacts is substantial evidence supporting a fair argument that significant impacts may occur (*Practice Under the California Environmental Quality Act*, CEB, Section 6.29).

Expert opinion must be supported by facts. According to *Practice Under the California Environmental Quality Act*, CEB, Section 6.33, "A lead agency may disregard expert testimony that lacks an adequate factual foundation or does not directly relate to the specific issue under review. The CEB publication cites several court decisions validating the fact that expert opinion may be disregarded if it relates to a subject outside the expert's field, if it is not based on an adequate foundation of specific information about the project, or because of the expert's interest in the matter. It is staff's belief that the appellant's experts have offered conclusions on matters outside their areas of expertise (e.g., effects on traffic and parking), and that none of the experts' opinions are substantiated by an adequate factual foundation that could lead to any reasonable conclusion regarding significant environmental impacts. Their arguments are based on a draft document that is subject to revision and documents that do not provide a demonstrable link between condominium conversions and significant environmental impacts. Their arguments do not provide any data that evaluating significant impacts using the City's own threshold criteria.

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KEY EVIDENCE OF ENVIRONMENTAL IMPACTS

17

EVIDENCE OF ENVIRONMENTAL IMPACTS

Impact 1: Condo conversions may displace substantial numbers of housing units or people, thus necessitating the construction of replacement housing elsewhere.

Utility: CEQA requires environmental review whenever a project may displace substantial numbers of existing housing or people, either way necessitating the construction of replacement housing elsewhere. See CEQA Guidelines, Appendix G, § XII-b & -c.

Evidence:

"It is true that when apartments convert to condominiums, a relatively small percentage of current renters buy their own apartment." See Ex. 16 (MarketPoint Realty Advisors).

18

Slide 18: This statement infers that because only a relatively small percentage of people buy their own apartments they will be displaced and unable to find alternate housing. Displacement does not mean that people will become homeless, but rather that they will need to relocate. Those who do not buy their own unit may in fact buy units in other buildings or rent elsewhere. No facts have been given to support the inference made by the appellant.

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont.):

"During the past five years there has been a very rapid increase in the number of rental units converted to condominiums and applications for condominium maps to allow more conversions... [T]he condominium conversions have had the negative effect of reducing the rental housing supply." See Ex. 11 (San Diego Draft Housing Element (May 25, 2006)).

"Priority for the expenditure of funds from the Inclusionary Housing Trust Fund shall be given to the construction of new affordable housing stock." See Ex. 26 (San Diego Municipal Code § 98.0505(b)).

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EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont.):

The City of Los Angeles prepared an EIR for the Lincoln Place Redevelopment Project, which dedicated an entire section to a discussion of the project's impacts on the loss of affordable housing, concluding that there would be "Net Unavoidable Adverse Impacts" on population and housing. See Ex. 18 (EIR).

The City of Glendale routinely prepares negative declarations for any project that involves the loss of affordable housing and uses that as an opportunity to impose mitigation measures; even the conversion of a couple of duplexes triggers environmental review. See Ex. 19 (dozens of MNDs).

20

Slide 19:

The appellant cites the City's Draft Housing Element (Ex. 11). This document has not been adopted land use document. It is subject to revision until it is adopted. It does not qualify as evidence. In fact, Market Pointe data indicates that vacancy rates are rising overall.

Condominium conversions do not displace existing housing units. The displacement of people as a result of conversions can result in the need to find other housing, but this is a social and economic issue, not a CEQA issue. There is no evidence that condominium conversions result in the need for the construction of new replacement housing. According to staff at the San Diego Housing Commission, there are no plans to construct replacement housing for people who have been displaced by condominium conversions.

Appendix O of the Guidelines is a sample initial study, which uses a checklist format. The sample is suggested and is not mandatory. With some exceptions (such as significant impacts to unique archaeological resources or protected plant and animal species), local agencies are free to determine the significance of impacts and the issues considered to be significant. Staff would do an environmental review of any new construction.

The appellant's statements do not lead to a reasonable conclusion that construction of replacement housing would result from the subject condominium conversions. People who are displaced as a result of these projects may rent or buy units in another building, or may make other living arrangements.

Slide 20:

Exhibit 18 addresses the demolition of 795 apartment units, not the conversion of existing apartments to condominiums. The City of Los Angeles exempts condo conversions. City of San Diego staff considers the lack of affordable housing to be a serious social and economic issue, but not a CEQA issue.

The statement about the City of Glendale is not accurate. Glendale exempts condominium conversions of up to 4 units. The environmental documents presented as exhibit 19 are all related to new construction projects. It is true that loss of affordable housing is addressed as a CEQA issue in these documents; however, with some exceptions (as discussed above) local agencies are free to determine which issues are significant within their jurisdictions. In addition, the mitigation applied by Glendale is in conformance with noticing requirements and other ordinances. City of San Diego staff does not consider compliance with existing laws and ordinances to be mitigation.

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont.):

Data collected by Todd Phillips at the San Diego Housing Commission indicates that condo conversions through December 2005 have displaced 1,998 households. See Ex. 10.

Experts Nico Calavita, Richard Lawrence, Gregg Robinson, and Gabriel Elliott (planner) all conclude that condominium conversions displace people and create demand for replacement housing. See Exs. 13 and 41-43.

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EVIDENCE OF ENVIRONMENTAL IMPACTS

Impact 2: Condo conversions may conflict with San Diego's goal of ensuring an adequate supply of affordable housing, under the housing element, by making it harder to increase housing densities (due to multiple owners).

Analysis: CEQA requires environmental review whenever the project may conflict with any applicable land-use plan, policy, or regulation of the city (including but not limited to the city's general plan) adopted for the purpose of avoiding or mitigating an environmental effect? See CEQA Guidelines, Appendix C, § IX-b. Such potential requires a mandatory finding of significance for achievement of short-term goals at the cost of long-term environmental goals. CEQA § 21083(b)(1).

22

Slide 21:

The need for displaced people to relocate is not the same thing as the construction of new housing, which would be subject to CEQA review. Market Pointe data indicates that there is an increase in vacancy rates overall.

The appellant offers the opinions of experts as substantial evidence that condo conversions result in physical impacts. However, Section 15304(b) of the CEQA Guidelines states "Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinions supported by facts." (emphasis added). The opinions of the appellant's experts are not supported by facts. They are unsubstantiated opinions.

Slide 22:

Affordable housing goals are related to the provision of affordable housing goals for all of San Diego's citizens. The goals are social and economic in nature and are not related to significant physical impacts. The construction of new housing would be subject to CEQA review; however, there are no new housing proposals associated with the projects that are the subject of the appeals.

The appellant has offered no evidence that condominium conversions will conflict with San Diego's affordable housing goals. He has provided no evidence that other structures will not be built at higher densities, thereby supporting the City's goals. He has provided no evidence that converted buildings will not increase densities by adding additional floors and providing underground parking.

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence:

"A question has come from the Planning Commission regarding what impacts are condo conversions having on the city's future supply of housing—as anticipated in the Housing Element. The concern is that once an apt. complex is converted, it will be more difficult to tear it down and replace it with denser development as allowed by existing zoning and plan designations and as anticipated in the Housing Element. (T) Betsy McCullough and the Program Managers believe that this is potentially a negative impact of conversions because, while they still could theoretically be torn down and redeveloped, it will be much harder once there are multiple owners. " " (T) So we suggest adding another category of topics to the draft condo conversions study that looks at the impact of conversion on the overall supply of housing. . . . See Ex. 34 (E-mail from Bill Levin to Bob Marks).

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont):

Expert Gabriel Elliott agrees that such a potential conflict requires study under CEQA. See Ex. 42.

Slide 23:

The appellant, city staff, and various other stakeholders participated in discussions about a possible condominium conversion study. The intent of the discussions was to look at all topics to be included in the study, which was intended to gather data about conversions, but staff was very clear that it would not be a CEQA study. The referenced e-mail suggested a topic to be included in the study, not a conclusion that there was a potential environmental impact. Regarding the idea that condominium conversions could significantly interfere with the City's goals for density, as stated above, the appellant and his experts have not offered any evidence that other denser development will not occur, or that converted complexes will not later create additional units (for example, by adding additional Dwors).

Slide 24:

Mr. Elliott's opinion lacks an adequate factual foundation. He has not provided any factual basis for the conclusion that condominium conversions will prevent densification and interfere with the City's goals. There is no evidence that other structures will not be built at higher densities, thus supporting the City's goals. Please see also staff's response to slides 15 and 16.

The statements in the appellant's experts' declarations rely heavily on a draft City document that is still subject to revision and which is not an adopted land use document, and a document entitled "Locked Out 2004: California's Affordable Housing Crisis." This document does not conclude that condominium conversions create a housing shortage. In fact, it states that affordable housing problems are caused by job growth (page 21). Staff believes that many of the opinions of the experts are declarant and that the individuals are not qualified to render these opinions. The declaration of Richard Lawrence does not include his credentials, so it is not clear what subjects he is an expert on, or why he is an expert. Staff believes that the appellant's experts have offered opinions on areas that are outside of their expertise, and that the experts' opinions should be excluded from the record.

EVIDENCE OF ENVIRONMENTAL IMPACTS

Impact 3: Condo conversions may have growth-inducing impacts.

Authority: CEQA requires environmental review whenever a project may have growth-inducing impacts. See CEQA § 21000(b)(5). This includes review "of the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment." See CEQA Guidelines § 15126.2(d). One example is inducing substantial population growth directly (e.g., by proposing new homes) or indirectly. See CEQA Guidelines, Appendix G, § XII-a. See also Gov't Code § 66583(a)(7) (requiring housing element to analyze opportunities for energy conservation with respect to residential development). See also *Terminal Plaza Corp. v. City & County of San Francisco*, 177 Cal. App. 3d 892 (1986) (ruling that payment of in-lieu fee used for construction had potential for ultimate environmental impact).

25

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence:

"Priority for the expenditure of funds from the Inclusionary Housing Trust Fund shall be given to the construction of new affordable housing stock." See Ex. 26 (San Diego Municipal Code § 98.0505(b)).

"[T]he Affordable Housing Fund . . . help[s] subsidize the construction of below-market-rate homes." See Ex. 35 (San Diego Housing Commission's web site).

"[T]he priority for expenditure of Inclusionary Housing funds shall be for . . . (c) construction of new affordable housing." See Ex. 36 (San Diego Affordable Housing Fund Annual Plan (Fiscal Year 2006)).

26

Slide 25:

The appellant is asking Council to make a reasonable inference that condominium conversions are growth inducing. Such an inference must be based on facts. No facts have been presented to support this argument. No evidence has been produced to demonstrate that the displacement of renters due to condominium conversions leads directly or indirectly to the construction of new housing. The displacement of people does lead to the need for people to relocate, but relocation is not the same thing as new construction. The appellant's argument is clearly erroneous.

Slide 26: The quotations presented as evidence are irrelevant. The City's affordable housing goals were in place before the City experienced a proliferation of condominium conversions, and they will remain in place during and after market corrections. The appellant has not demonstrated that the affordable housing goals are a result of condominium conversions.

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont):

The current and proposed housing elements also support the conclusion that the loss of affordable housing leads directly or indirectly to the construction of more housing, as do experts Nico Calavita, Richard Lawrence, Gregg Robinson, and Gabriel Elliott. See Exs. 11-13 and 41-43.

27

EVIDENCE OF ENVIRONMENTAL IMPACTS

Impact 4: Condo conversions may expose sensitive receptors to substantial pollutant concentrations, such as asbestos and other public-health impacts, and directly or indirectly cause substantial adverse effects on humans.

Authority: CEQA requires environmental review whenever a project may expose sensitive receptors (i.e., people who are more susceptible than the average person) to substantial pollutant concentrations or may directly or indirectly have a substantial adverse effect on humans. See Guidelines, Appendix G, § III-d & § XVII-d. The latter requires a mandatory finding of significance. CEQA § 21083(b)(3).

28

Slide 27:

Please see response to Slide 24. No relevant facts have been presented demonstrating a link between condominium conversions and the construction of replacement housing.

Slides 28, 29, 30:

Asbestos removal is regulated by the San Diego County Department of Environmental Health. The asbestos citations are related to violations of the law. It would be inappropriate for staff to analyze projects based on an assumption that permittees or their contractors will violate the law.

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence:

The project subject to today's appeal was built in 1977, before asbestos was banned for building materials. See Exs. 32 (United Title property profile) and 33 (CALEPA's information on asbestos).

Condo conversions have a bad history of exposing tenants and workers to asbestos, as reported in the press in June 2004 and again in May 2006. See Exs. 28 and 29 (news reports).

The County of San Diego began a public-education campaign last month "because of a rise in violations occurring during the recent spate of condo conversions. See Ex. 30 (Union-Tribune news report).

29

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont.):

The County of San Diego has issued dozens of asbestos violations to condo conversions in the last three years. See 31 (county's violation notices).

Asbestos is known to cause cancer in humans and is to be avoided in all types of residential construction. See Exs. 40 and 42.

Condo conversions have other adverse health impacts, especially as a result of "doubling up" and relocation stress. See Ex. 40.

30

EVIDENCE OF ENVIRONMENTAL IMPACTS

Impact 5: Condo conversions may increase traffic due to persons commuting further to or from work, school, or other regular daily activities. Aside from air-pollution concerns, longer commutes result in increased fuel consumption.

Authority: CEQA requires environmental review whenever a project may cause a significant increase in traffic. See CEQA Guidelines, Appendix G, § XIV-a, -b & c. See also Gov't Code § 66583(a)(7) (requiring housing element of general plan to analyze opportunities for energy conservation with respect to residential development). An EIR may include total estimated daily trips generated by the project and the additional energy consumed per trip by mode. CEQA Guidelines, Appendix F.

31

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence:

"People have responded to this situation [the loss of housing] in several ways, including doubling up, moving further from jobs and relocating away from the city and region. Increased homelessness, longer commute times, increased congestion, energy (gasoline) use and pollution are unwelcome results of the lack of affordable housing in San Diego." See Exs. 11 and 12 (San Diego Draft Housing Element (May 25, 2006)).

Experts agree that such consequences are attributable to the loss of affordable housing. See Exs. 13 and 41-43.

32

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Slide 31: The appellant suggests that there may be physical effects related to condominium conversions. This is speculative -- it is equally possible that such effects could be offset by new owners moving closer to their jobs. Regardless, the fair argument standard requires the appellant to provide substantial evidence that condominium conversions may result in significant environmental impacts. No facts have been presented that could be compared to the City's significance determination thresholds, so it is not possible to conclude that significant effects may result.

Slide 32:

This argument is not supported by any data regarding the number of renters displaced by condominium conversions who may need to move farther away from their jobs or schools. In addition, the argument does not take into account the fact that potential buyers may be moving closer to their jobs, thereby decreasing traffic effects. The argument is entirely speculative, is not based on relevant facts, and does not rise to the level of substantial evidence and should be excluded from the record.

The experts' opinions are based on a draft document which is still subject to revision, and on inferences drawn from the draft document. Their conclusions are not supported by factual data regarding the number of people who must move farther away, or even any proof that people will move farther away. They also do not take into account the number of people who will move closer, offsetting the effects of those who might move farther away. The experts have not attempted to use the City's significance thresholds to support their opinions. The opinions are speculative, some are outside the areas of the declarants' expertise, and they are not supported by an adequate factual basis. They should be excluded from the record.

EVIDENCE OF ENVIRONMENTAL IMPACTS

Impact 6: Condo conversions may result in increased demand for parking.

Authority: CEQA requires environmental review whenever a project may result in inadequate parking capacity. See CEQA Guidelines, Appendix G, § XV-f.

33

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence:

"In a review of 73 recent condominium conversion projects, 36 would comply with the proposed parking standard." In other words, more than half would not meet the new requirements. See Ex. 37 (analysis of latest proposed regulations for condo conversions).

San Diego has been proposing parking-related regulations for condo conversions for more than a year, as many other jurisdictions have already adopted.

34

Slide 33, 34, 35, 36:

The baseline for environmental analysis is the condition that exists at the time the review is commenced. There is no factual evidence to support the claim that condominium conversions will lead to residents with more vehicles than are owned by tenants, thereby resulting in a worsening of the baseline condition. In fact, the appellant's own expert states "Middle class families tend to be smaller in size than those with lower incomes, and they are less likely to live with roommates." Given the relatively low incomes of most households in this sample, it is reasonable to assume that density would decrease if these residents are replaced by higher income condo owners." Using this argument, it is reasonable to assume that there are more cars in areas of higher density. It is also reasonable to assume that renters have more roommates and the roommates may have cars, and that parking availability may actually improve when a smaller middle class family with no roommates replaces a larger low income family with roommates. The appellant's argument is equally speculative and is not supported by fact and should be excluded from the record. Staff's belief is that the number of people and cars at any condominium or apartment structure will always be in flux, changing as people move in and out and buy and sell cars. Even if Council believes that condominium owners have more cars than apartment renters and that condominium conversions may result in increased demand for parking, the social inconvenience of scarce parking is not an environmental impact. In addition, no evidence has been provided of how much traffic or air quality effects could be generated by parking shortages, and there is no comparison to the City's significance thresholds. The appellant's and his experts' opinions are not supported by factual evidence.

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont):

"Census data and Nationwide Personal Transportation Data indicate that a clear relationship exists between household income and number of cars owned. According to these sources, as income increases, the number of cars owned also increases. It is assumed that as the number of cars owned increase, demand for parking also increases. Literature and case studies on the subject also affirm that there is a relationship between income and car ownership, and therefore between income and parking demand. [1] The results of the parking demand survey show that affordable (housing) projects require less parking than market-rate projects." See Ex. 38 (San Diego's Multi-Family Residential Parking Study).

35

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont):

Experts Gregg Robinson and Gabriel Elliott agree. See Exs. 42 and 43.

36

EVIDENCE OF ENVIRONMENTAL IMPACTS

Impact 2: Condo conversions may have cumulative environmental impacts.

Authority: CEQA requires environmental review whenever a project may have cumulative impacts. See CEQA Guidelines, Appendix C, § XVII-b. Such potential requires a mandatory finding of significance. CEQA § 21083(b)(2).

37

EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence:

How many condo conversions have been approved since January 1, 2004? Somewhere around 20,000, with another 5,000 to 10,000 coming up for approval. See Exs. 25 and 27 (city records).

"We [the city] have not yet figured out a way to determine the total number of off the shelf units undergoing conversion. [1] ... Adding in the off the shelf conversions that do not need Certificates of Compliance leads me to believe that conservatively 10-15% of the entire rental stock has applied to be converted in past few years, mostly in past year [sic]. This is about 10 times the percentage claimed by Alan Nevin and Gary London in recent articles they have written extolling virtues [sic] of conversion." See Ex. 27 (e-mail between Bill Levin and Coleen Clemenson).

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Slides 37, 38, 39:

Staff acknowledges that there has been a proliferation of condominium conversion projects; however, this fact does not support a conclusion that condominium conversions result in significant physical effects on the environment. This argument is speculative and not supported by facts, and should be excluded from the record.

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EVIDENCE OF ENVIRONMENTAL IMPACTS

Evidence (cont):

Just look at the maps of pending appeals and approved projects. They don't even include all the projects in the categories they represent! See Exs. 3 and 4.

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CONCLUSION

The evidence supports a fair argument that this condo conversion alone has the potential for significant impacts on the environment.

The evidence also supports a fair argument that this condo conversion and all the other conversions in the City of San Diego since January 1, 2004, have the potential for significant cumulative impacts on the environment.

Appellant's evidence is substantial, based on facts (usually from the city's own records), reasonable assumptions based on facts, and expert opinion supported by facts.

Therefore, this condo conversion must be subject to environmental review under CEQA.

40

Slide 40:

The appellant's and his experts' evidence infer that the subject condominium conversions may result in physical impacts on the environment. This does not meet the fair argument standard, which requires substantial evidence that those condominium conversions may result in significant physical impacts on the environment, either singly or cumulatively. The information provided by the appellant and the appellant's experts is not supported by facts or related in any way to the City's significance determination thresholds. The appellant's position is composed entirely of argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment, and therefore it should be excluded from the record.

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Staff Response to "Report on Survey of Residents in Large Condominium
Conversions in District Three" prepared by J Gregg Robinson, Ph.D.
(Staff comments provided in bold)

The report states "While I believe that the respondents interviewed in this study reasonably represent the members of the five complexes under consideration, it is possible that this group is not representative of the larger community of San Diego. Large projects in the third district could be different from large projects elsewhere in the city, or contrast with medium and small complexes."
Staff agrees that the sample may not represent an accurate picture of conditions throughout the city.

Dr. Robinson suggests that the city should require EIRs for complexes over 25 units. Staff bases the EIR determination on the potential for significant CEQA impacts.

According to the report, "The Hillcrest area in particular, with its large number of hospitals and clinics, seems to attract elderly and disabled residents. Moving them away from these institutions could increase traffic and parking pressures as these people return to make use of services not found elsewhere in our community."

This statement seems to assume that a significant portion of the elderly and disabled Hillcrest residents currently walk to the hospitals and clinics, that they currently rent apartments and they will be displaced by condo conversions, and that medical services are not reasonably available in other parts of the city. No data is provided to support these assumptions.

Tables 7 and 8 address the self-assessment of 104 people (representing 104 units) regarding their risk of having to move in with friends or family because of a financial crisis, a housing crisis, or an illness, a fight with a roommate or objections of a landlord. Of the 104 household representatives surveyed, 34.3 percent (34 people) felt that they were likely or very likely to be forced to stay with friends or family members for at least a few weeks if they had to move. 13.2 percent (13 people) felt it was likely or very likely they would become homeless.

The report states "Not surprisingly the proportion of respondents who thought they were at risk of actual homelessness was much smaller. At 13%, however, and given the extremely large number of condominium conversions taking place in our community, the impact on service providers could be great."

The report appears to contradict itself regarding the risk of homelessness. The report summary section states "At the extreme, the data in this study indicate a significant risk of homelessness on the part of at least 10% of the sample."

The author acknowledges that the problem of homelessness may not have a direct impact on CEQA related issues, but states that it poses risks of indirect impacts,

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such as the demand for social services including drug and alcohol addiction services, police intervention, park and public space utilization, etc.

Staff recognizes that such indirect impacts are possible, but believes that they are social, economic, and police issues rather than CEQA issues. Staff uses significance determination thresholds in evaluating all discretionary projects, including condominium conversions. The City's thresholds do not address social issues, and the thresholds state that police and park utilization are planning and facilities financing issues rather than CEQA issues.

Traffic and Parking: The report states "When upper middle class condo owners replace lower middle class apartment renters serious changes in traffic and parking are likely." Table 10 states that 6 people out of the 104 responders (5.8%) are planning to buy a condo in their current complex.

The report does not state whether any of the other 94.2% are planning to buy a condo in another building or a house, or intend to move for reasons other than economic.

The report states "Over half of all apartments have only a single car. This a very low level of car ownership compared to most middle class families."

Table 11 shows the number of cars per apartment (ranging from 0 to 5 cars) as reported by the 104 responders. No comparative statistics are given about the car ownership of "most middle class families."

Table 14 gives information on the number of parking spaces assigned to tenants (from 0 to 3 spaces). A comparison with Table 11 (car ownership per apartment) shows that the number of assigned spaces is equal to the number of cars owned (101 responses received, 101 cars owned, and 101 spaces assigned).

The report states that new owners will have higher ~~auto~~ ownership rates; however no comparative data is provided to support this conclusion. Staff believes that the number of cars per tenant and owner will always be in flux as people move in and out and buy and sell cars.

Staff acknowledges that some of the older buildings do not have adequate parking. However, staff reviews projects in accordance with CEQA, which states that generally the baseline for analysis is the condition that exists at the time the analysis begins. No evidence has been presented to staff that the condo conversions result directly or indirectly in significant parking, traffic, or air quality impacts.

The report seems to contradict itself in saying: "Middle class families tend to be smaller in size than those with lower incomes, and they are less likely to live with roommates." Assuming this is true (no factual basis for this conclusion was presented in the report), wouldn't it also be reasonable to conclude that those lower income people with larger families and more roommates would have more cars per unit?

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Staff believes that social and economic effects, both positive and negative, result from condo conversions; however, the author has not demonstrated any nexus between these effects and significant physical impacts on the environment as required in Section 15358(b) of the CEQA Guidelines.

(R-2007-591) 338B
of 12/15/06
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RESOLUTION NUMBER R- 302242

DATE OF FINAL PASSAGE DEC 15 2006

A RESOLUTION ADOPTING THE DRAFT 2005-2010 CITY
OF SAN DIEGO GENERAL PLAN HOUSING ELEMENT.

WHEREAS, the City of San Diego faces an increasingly severe lack of affordable housing and the City Council has for more than four years declared an affordable housing state of emergency; and

WHEREAS, the California Department of Housing and Community Development [HCD] requires municipalities to adopt an updated Housing Element every five years as a part of the municipality's General Plan; and

WHEREAS, the purpose of the Housing Element is to create a comprehensive plan with specific measurable goals, policies and programs to address the critical housing needs of this City; and

WHEREAS, state law requires that each local jurisdiction be assigned a "regional share goal" in order to assure sufficient vacant or potentially redevelopable land is available to meet regional housing needs; and

WHEREAS, SANDAG has determined the City of San Diego's regional share goal for the 7.5 year period from January 1, 2003 through June 30, 2010 to be 45,741 housing units for very low-income, low-income, moderate income and above moderate income household categories; and

WHEREAS, an inventory of potential sites conducted in the Spring of 2005 determined that San Diego has sufficient land available to accommodate the City's regional share requirement; and

WHEREAS, the November 2006 draft of the 2005-2010 Housing Element incorporates comments and recommendations received from various individuals and groups who have reviewed and commented on earlier versions of this document; and

WHEREAS, among those providing review and comment were the Council-appointed Affordable Housing Task Force, the 20-member Housing Element Working Group, the Chamber of Commerce Housing Committee, the San Diego Housing Federation, the Building Industry Association, the San Diego Affordable Housing Coalition, and the Community Planners Committee; and

WHEREAS, the Community Planners Committee, the San Diego Housing Commission and the San Diego Planning Commission held workshops and discussions on the Draft Housing Element, and the Planning Commission on November 2, 2006 voted 8-0 to recommend the City Council adopt the Draft Housing Element and certify the environmental document; and

WHEREAS, the San Diego County Regional Airport Authority has found an earlier draft of the Housing Element to be conditionally consistent with the Airport Land Use Compatibility Plan [ALUCP]; and

WHEREAS, following City Council adoption of the Housing Element, the California Housing and Community Development Department [HCD] must approve and certify the Housing Element; and

WHEREAS, the Housing Element is intended to reflect existing conditions as of July 1, 2005; and

WHEREAS, the policies and programs recommended in the document are based on July 1, 2005 conditions and primarily include actions that can be implemented by June 30, 2010; and

WHEREAS, the City Council considered the issues discussed in the Draft 2005-2010 City of San Diego General Plan Housing Element; NOW, THEREFORE,

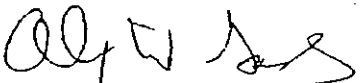
BE IT RESOLVED, by the City Council of the City of San Diego, that the Council hereby adopts the Draft 2005-2010 City of San Diego General Plan Housing Element.

BE IT FURTHER RESOLVED, that the City Council has determined that the adopted 2005-2010 City of San Diego General Plan Housing Element identifies and analyzes existing and projected housing needs, that it establishes goals, policies, quantified objectives, financial resources and scheduled programs for the preservation, improvement and development of housing.

BE IT FURTHER RESOLVED, that the City Council finds that the Housing Element adequately includes a five-year action program that: identifies adequate sites to meet housing needs; addresses the conservation of existing housing, including affordable and assisted housing; addresses and, where appropriate and legally possible, removes governmental constraints to the maintenance, improvement and development of housing for all income levels, including housing for persons with disabilities; is consistent with the other elements of the City's general plan; provides housing opportunities without discrimination; and provides for numerous forms of housing, including multifamily rental housing, housing for agricultural workers, and emergency

and transitional housing opportunities for the homeless.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Alex W. Sachs
Deputy City Attorney

AWS:pev
11/20/06
Or.Dept:Planning
R-2007-591
MMS #4075

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 05 2006

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 12-15-06
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

DEC 05 2006

Passed by the Council of The City of San Diego on _____, by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 15 2006

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

(Seal)

By

Mary Cepeda

Deputy

Office of the City Clerk, San Diego, California

Resolution Number

R-302242